A Reply to Arthur J. Goldberg *Alexander M. Bickel*

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A Journal of Politics and the Arts – February 17, 1973, 50 cents

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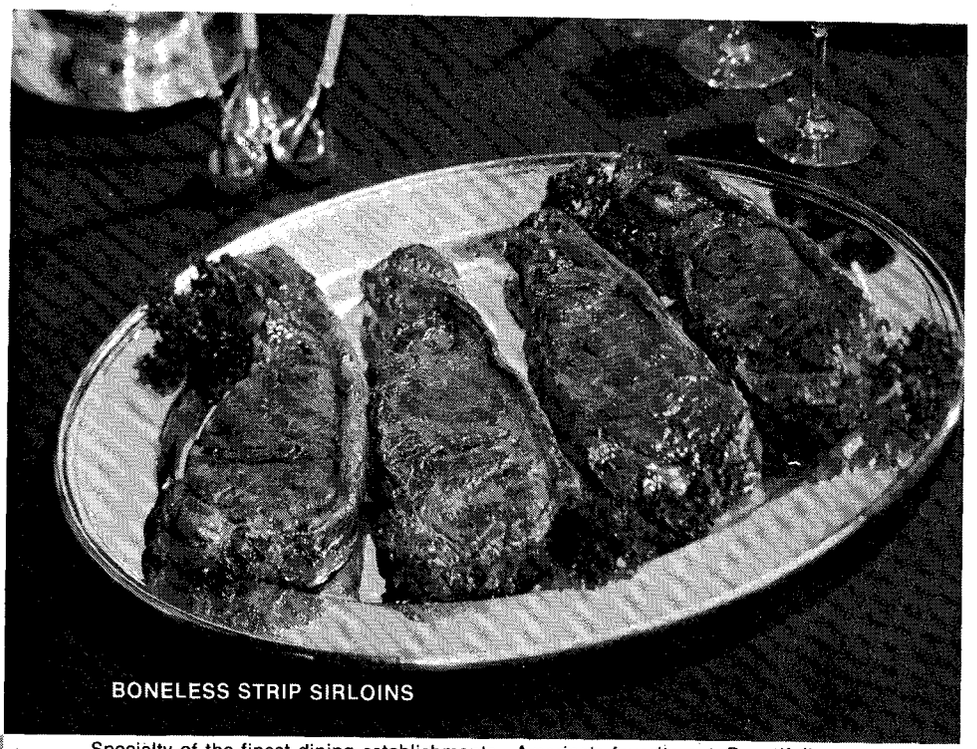

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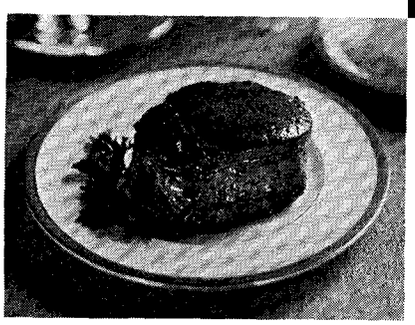

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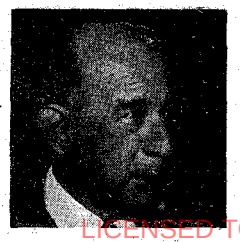

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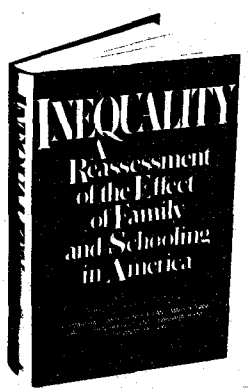
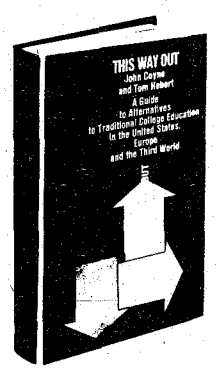


Not true about genes, I. Q. scores and "quality schooling"?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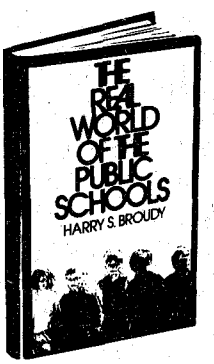

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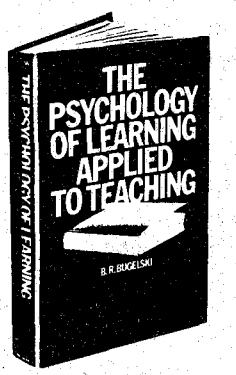
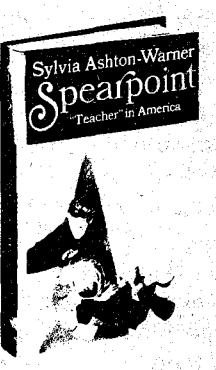


How can we reach the kids through their emotions?



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TRB

from Washington
February 17, 1973

Reverting to Form

The question is now, can he govern? Mr. Nixon stands at his peak: an unprecedented election landslide, a Gallup Poll rating of 68 percent. He is stern, taut, confident; eager to show who's boss. He looks at Congress, waiting for something to be outraged by.

New Presidents in the past have been catered to, they have been conciliatory—the few months following inaugural, it is thought, are critical, the most plastic in four years. It is vital to get off to a running start.

Not Mr. Nixon; he has contempt for an ineffectual Congress; he emerges from solitude with a veto in either hand. He has shucked off earlier dalliance with welfare liberalism; a year ago he called property taxes "a national disgrace" but there is nothing about abolishing them in the new budget; he formerly advocated the Family Assistance Program but there is nothing about guaranteed incomes in the budget now. He wants elderly beneficiaries of Medicare to pull in their belts and shoulder an extra billion dollars. They should practice self-reliance. Do they think their problems can be solved "by throwing money at them"? Do they think they are Grumman Aircraft, or Penn Central, or Lockheed? He wants to be fair to the poor, but not just yet.

It is called a "Coolidge budget"; Coolidge preached self-reliance, local solutions, decentralization. Yes, but 50 years ago Coolidge was accessible; there was collectivized government; he did not go into solitude and invade Cambodia, or bomb Hanoi. Think of Coolidge's cabinet! He may have been a lightweight but his secretary of State was Charles Evans Hughes; Treasury, Andrew Mellon; attorney general, Harlan F. Stone (later a great chief justice, like Hughes); Commerce, Herbert Hoover. These were national figures; compare their names with Ehrlichman and Haldeman, with Butz and Lynn. To be sure, we make an exception of Henry Kissinger, the one man with a face in the White House crowd; the man who came out in his famous two-hour Vietnam press conference and quietly acknowledged that it was a "civil war." (The two words destroyed 12 years of lies.)

Maybe Mr. Nixon is right; maybe he has the constitutional authority to "impound," *i.e.*, assert an item veto over appropriations (wise or silly) voted by Congress. But if he is right (and he told his press conference it is "absolutely clear") then I have been living under a different form of government from what I thought.

Here is what Assistant Attorney General William Rehnquist, now associate justice of the Supreme Court, wrote in 1969: "With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that the existence of such a broad power is supported by neither reason nor precedent."

It is true, the President has limited right by custom to impound under certain circumstances, but not the sweeping right that the belligerent Mr. Nixon is categorically asserting.

Mr. Nixon emerged from his election triumph with a chip on his shoulder. It is interesting to study recent utterances. "You'd think I'd be elated," he told Saul Pett of the AP in a moment of self-analysis. ". . . But there is this letdown." Always he must combat the letdown; always face new challenge. It is "a continuous battle," he said. He comes back ironically to "the better people"—they are his adversary. They appear again and again. He told *The Washington Star News* November 9 that morals have declined: "We saw a breakdown in what I would call the leadership class in this country." They appeared in his inaugural; figuratively looking back over his shoulders at critics he said, "In recent years, that [American] faith has been challenged. Our children have been taught to be ashamed of their country, ashamed of their parents, ashamed of America's record at home, and of its role in the world."

They were there, too, in his announcement of the cease-fire January 23. "Now that we have achieved an honorable agreement," he said, "let us be proud that America did not settle for a peace that would have betrayed our allies, that would have abandoned our prisoners of war . . ." It seemed a little unfair to imply that critics of the war wanted to "abandon" POWs, but so what; this is no new thing; though the adversary has changed, he has been disparaging the motives or patriotism of somebody almost since we can remember; Jerry Voorhis, Helen Gahagan Douglas, Truman, Adlai Stevenson—now critics of his "peace with honor."

The "so-called better people" appeared in Mr. Nixon's press conference, too, on January 31. This time they were in "the media and intellectual circles." He said proudly that, in contrast to them, the majority of Americans supported him, "despite the fact that they were hammered night after night, day after day, with the fact that this was an immoral war, that Americans should not be there, that they should not serve their country, that morally what they should do was desert their country."

Said *Time* magazine: "It was a strange Nixonian equation—suggesting that to criticize the war was practically the same as preaching desertion."

He was asked innocently at the press conference if he had something in mind "to help heal the wounds in this country . . . in terms of amnesty." Amnesty set him off; he gave a tough response. They "must pay their price, and the price is not a junket in the Peace Corps."

A lot of people will agree, of course. We shan't argue the point, but certainly it is not the line Lincoln took after the Civil War, nor is it particularly conciliatory at the start of a new term. Vincent Persichetti's "A Lincoln Address" (the second inaugural, declaimed against a symphony orchestra) was scheduled as a feature of the Nixon inaugural January 19, but it was unexpectedly cancelled and given its premiere later, in New York. Presumably Mr. Nixon's protective staff thought Lincoln's compassionate words would embarrass the President, for the cease-fire had not yet been announced—"Fondly do we hope . . . that this mighty scourge of war may speedily pass away." You can't be too careful.

But there it is: Mr. Nixon is engaged in an aggressive battle with Congress three months after election while feeling persecuted by "the better people." He has an immense majority; can he govern?

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Contents

7-9 Comment
Never, Never for Amnesty? Handgun Violence, Taking Care of Litton

10 Thieu's Generals: Tactical Tug-of-war —*Stanley Karnow*

11 Watergate Lies—*Walter Pincus*

14 Absentee Owners of America-V —*Wright Patman*

17 The Overworked Court: A Reply to Arthur Goldberg—*Alexander M. Bickel*

19 Feiffer

20 Theater—*Robert Brustein*

20 Poem—*Sandra McPherson*

21 Teaching Writing—*Doris Grumbach*

22 Books—Reviewed by *Abe Ribicoff, Peter J. Ognibene, H. R. Wolf, John W. Nason, Sanford J. Ungar*

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Never, Never For Amnesty?

The word "amnesty" comes from *amnestia,* which is Greek for forgetfulness. But Webster be damned. To the President amnesty "means forgiveness." From a Christian point of view that interpretation would seem to commend it, and if we could claim the power of absolution as the President has, we would use it. But Mr. Nixon will not use it, because draft dodgers and deserters have sinned against the state (in many instances so as not to sin against their consciences) and so must do penance—go to jail or remain in exile: "We [the Executive person] cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps or something like that, as some have suggested." Are these stern words nothing more than a reflex political response to the presumed prejudices of a silent majority? Or does the President genuinely feel that strongly about draft resisters? A year ago, answering a question put by CBS newsman Dan Rather, he was more relaxed: "I, for one, would be very liberal with regard to amnesty, but not while there are Americans in Vietnam fighting to serve their country and defend their country, and not while POWs are being held by North Vietnam. After that we will consider it, but it would have to be on the basis of their paying the price, of course, that anyone should pay for violating the law." This line hardened during the presidential campaign when Senator McGovern let it be known that he supported amnesty for draft evaders. We soon saw the President on network television, telling POW wives he would "never, never" give amnesty to deserters—as long as Americans were held in North Vietnam. Now the prisoners are coming home. Might not forgetfulness, if not forgiveness, help to bind up the nation's wounds? The answer thus far given is negative. There has been no movement toward clemency for those war victims who are in Canada, Sweden and our own jails.

The explanation for this is not pure vindictiveness. The abstraction usually brought forward is that "the dead" will lose their "honor" if exiles and prisoners created by the draft, who are alive, are not made to suffer. People ask if those who obeyed the law paid a price why shouldn't those who disobeyed pay a price too? It is logically symmetrical, but it assumes that deserters and evaders have not paid a price already and that if their motives were sincere they shouldn't

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mind, indeed should welcome, going to jail. And it assumes that American society will be better off if they do go to jail.

The political groups that claim to speak for the war resisters, like Safe Return (New York), Amex (Toronto) and Up From Exile (Sweden), are in their way just as inflexible as the President. They maintain that before they can recognize the authority of the US government, it must absolve itself by publicly confessing its guilt as the perpetrator of an immoral war. Those who engineered and supported the Vietnam effort, they say, were morally in the wrong as were such tools of the war as the selective service system and the laws upholding it. To disobey them, the resisters argue, was to obey a higher law. They will not accept any logic that imposes punishment for having been right, certainly not a prison term, not even a mandatory "junket" in the Peace Corps. The only amnesty they will recognize as fitting is one that completely, unconditionally obliterates the criminal charges against all categories of men who refused military service.

These three antiwar groups have announced a conference beginning February 19 in Paris to publicize the exiles' cause. A spokesman for Safe Return says his greatest concern is that the draft resisters not become scapegoats for the failure in Vietnam. The other abiding worry is that amnesty, when it comes, may be given only to draft evaders and not deserters. This would amount to class discrimination, he believes, because deserters, unlike evaders, tend to come from poor and rural neighborhoods. In many cases they did not confront the war as a moral issue until long after they had signed into the service.

Except in a few cases, the members of Congress most outspoken against the war have not been willing to take a stand on amnesty. Sen. McGovern, stigmatized last year as the candidate of "acid, amnesty and abortion," has not discussed the subject since November because he feels it is a matter for the Executive to decide. Sen. Hatfield (R, Ore.), though he opposes the President's position, has not made a formal statement on amnesty and doesn't plan to. Sen. Mondale (D, Minn.) is short of foreign policy staffers at the moment, and therefore doesn't plan to speak. Sen. Mansfield (D, Mont.) says that "as always, it's up to the President." Sen. Muskie told ABC's *Issues and Answers* that he's in favor of some conditional kind of amnesty, granted on a case-by-case basis to worthy individuals, but not to deserters. Sen. Kennedy, who's generally favorable to amnesty and has conducted the definitive hearings on the question, does not intend to stir things up at this time, and, like the others, he has not endorsed any amnesty legislation.

The only bill offered in the Senate was written by a conservative, Sen. Robert Taft (R, Ohio). He would allow draft evaders—but not deserters—to earn amnesty by serving for three years in the military or an alternate government branch such as the Peace Corps or VISTA at the lowest pay grade. Those now in prison would receive credit of up to two years for the time already served. In the House, Rep. Edward Roybal (D, Calif.) has offered an almost identical bill. Rep. Edward Koch (D, NY) has one that would shorten the length of alternative service to two years. And Rep. Bella Abzug (D, NY) has written the only bill supported by groups like Vietnam Veterans Against the War and Amex. It would provide universal, unconditional amnesty for all men who refused to serve during the Vietnam years, and it would establish a five-member board to oversee their rehabilitation. Last year she found three cosponsors: Rep. Conyers (D, Mich.), Rep. Dellums (D, Calif.) and the late Rep. Ryan (D, NY).

Although only the President has the power of individual pardon, and has traditionally been the one to grant amnesty, the Supreme Court in 1895 recognized the right of Congress to pass general amnesties independent of the Executive. Congress has never used that power, and is not expected to now. It will follow the President's lead.

In other times it was the Executive that most eagerly moved toward amnesty, and as historian Henry Steele Commager has pointed out, the early Presidents seem to have been more generous than those of the 20th century. George Washington made no attempt to prosecute deserters from the Revolutionary Army, and pardoned all participants in the 1794 Whiskey Rebellion. John Adams gave a "full, free and absolute pardon" to the members of Fries Rebellion of 1799. Jefferson pardoned deserters who returned to the army in 1807; Madison did the same during the War of 1812; and Jackson pardoned deserters in 1830 provided they never enlisted again. Lincoln proclaimed a general amnesty following the Civil War, despite opposition from congressmen who wanted to punish the South for its transgression. The record since has been less impressive. Many World War I draft evaders and deserters weren't released from prison until the presidencies of Harding and Coolidge. On recommendation of an amnesty committee, Truman released only about one-tenth of the 15,000 war resisters in federal custody at the end of World War II. There was no amnesty after the Korean war.

This pattern suggests a hardening of the heart, a growing fondness for a theoretical system of guilt—what Abraham Lincoln called a "pernicious abstraction." There are some who feel, as columnist William S. White wrote last week, that amnesty after this war would "hand to future 'dissidents' the power, at least hypothetically, to denude the armed forces of the United States and to veto the foreign policy of its elected leaders." Those who tremble for the nation on this account should consider how much more convincing these arguments must have been when they were presented to Washington and Lincoln, and how triumphantly they were disregarded.

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Handgun Violence

At his press conference the day after Mississippi Senator John Stennis was shot, President Nixon called it "one of those senseless things that happens, apparently . . . Fortunately not happening as much as it did previously." According to the FBI, there are a quarter of a million armed robberies annually reported to police; in two-thirds of them the weapon is a handgun.

There are approximately 100 million privately owned long guns and shotguns and 30 million privately owned handguns in the United States. Some states and cities have strict ordinances governing the ownership or carrying of handguns, but their effectiveness is undermined when, by simply crossing a state line, a criminal can buy firearms at a sporting goods store or pawn shop. It is this vast arsenal of *legitimately owned* weapons that makes it easy for any criminal to get his hands on an "equalizer."

If Congress wants to diminish handgun violence, it should establish "restrictive licensing," as the National Commission on the Causes and Prevention of Violence suggested more than three years ago. Formed by President Johnson after the assassination of Senator Robert Kennedy, the commission under its chairman, Milton S. Eisenhower, advocated limiting handgun ownership to those who can "demonstrate to the authorities an affirmative need to own the firearm" and recommended that "determination of need be limited to police officers and security guards, small businesses in high crime areas, and others with a special need for self-protection." Because its studies showed that a gun in the home was more likely to be used by one family member against another or cause an "accident," rather than stop a robber or burglar, the commission concluded that "the self-defense firearm appears to be a dangerous investment" and recommended "the federal system [of handgun regulation] should not consider normal household protection a sufficient showing of need to have a handgun." If the commission's restrictive licensing scheme were put into effect, about 90 percent of the privately owned handguns would have to be surrendered to the government; their owners would of course be compensated. Last year Senator Philip A. Hart (D, Mich.), a member of the Eisenhower Commission, introduced such licensing legislation only to have the Senate defeat it 84 to 7.

While the Nixon administration has been, to put it charitably, a half-hearted advocate of gun control, the Stennis shooting prompted the President to say he might support legislation outlawing cheap, short-barreled handguns—the so-called "Saturday-night specials," and he suggested Senator Roman Hruska (R, Neb.) "will now work with the Judiciary Committee to find the formula which will get the support necessary to deal with this specific problem."

How hard will Senator Hruska push? He has been the National Rifle Association's chief artillery piece on Capitol Hill and has done more than any other person to kill bills that would have made it harder for criminals and deranged individuals to get firearms.

After Governor Wallace was shot with a cheap handgun last May, Senator Birch Bayh (D, Ind.) introduced a bill to outlaw Saturday-night specials. Once again Hruska led the firing squad for the gun lobby. The bill that finally passed the Senate was considerably weakened by an amendment deleting the record-keeping requirements for sales of .22 caliber rimfire ammunition established by the Gun Control Act of 1968. (Senator Stennis was reportedly shot with a .22 caliber pistol.) The amended bill then went to the House where the Judiciary Committee, with its eye on the November elections, let it die.

The President qualified his mild support for control of Saturday-night specials with his statement that "what we need is a precise definition which will keep the guns out of the hands of criminals and not one that will impinge on the rights of others to have them for their own purpose in a legitimate way." It has been exactly those "precise definitions" which Hruska and other gun lobby senators have used to gun down restrictive legislation.

Taking Care of Litton

It is worth noting how well projects involving Litton Industries fared in the President's fiscal 1974 budget—a budget completed after the announcement that Litton's former president, Roy Ash, would become director of the Office of Management and Budget, but before he officially took over.

The navy allocated $590.9 million for seven more DD 963 destroyers, up from last year's $248.8 million. To date Litton is the only builder of DD 963s. The entire navy shipbuilding budget is up almost $1 billion from last year—to $4 billion—despite congressional criticism of shipbuilding overruns. Any payment on Litton's $400 million claims would come from there. The air force's subsonic cruise armed decoy missile, for which Litton supplies the guidance system, received a major increase in funding. The B-1 bomber funding is up—Litton provides the inertial guidance system. TACFIRE, a system for automation of battlefield intelligence and fire support, developed by Litton for the US army, jumped from a $4.2 million development contract last year to a proposed $40.6 million production-testing contract. Litton Bionetics, a subsidiary that last year received $7 million for operating cancer research at Fort Dietrich, Maryland for HEW, is in for at least that much and perhaps more this year. Their unusual five-year contract permits an escalation of funds that could go to $20 million.

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Tactical Tug-of-war

Thieu's Generals

by Stanley Karnow

Saigon

It appeared a couple of weeks ago that the elaborate mechanism contrived to supervise the Vietnam cease-fire might never begin to operate. But now the teams assigned to keep the peace have actually moved into the field. And even if peace is still more a hope than reality, these groups are performing a significant function. On the one hand they are providing President Nixon and Hanoi with the interlude during which the remaining troops in South Vietnam can be withdrawn and the American prisoners of war held by the Communists can be released. At the same time they are giving South Vietnamese President Nguyen Van Thieu and his Vietcong adversaries the chance to prepare for the political struggle that certainly lies ahead.

Members of the International Commission for Control and Supervision had hardly been here a day before they were beset by housekeeping problems. The Canadians were dissatisfied with their living quarters. The Hungarians wanted PX privileges, and the Indonesians warned that they could not eat pork. They also complained, with some justification, that they could not proceed to their designated monitoring posts around the country until the four-part Joint Military Commission, composed of the United States, North Vietnam, the Saigon government and the Vietcong went into action. The Joint Commission, however, was embroiled in procedural disputes that largely grew out of Thieu's refusal to recognize the status of the Provisional Revolutionary Government, which the Vietcong considers to be a parallel administration. What apparently worried the American mission here as well as the administration in Washington was that Thieu would succeed in provoking the North Vietnamese and Vietcong to walk out of the whole affair. This was, of course, his objective.

The Paris agreement empowers the Joint Commission to enforce the cease-fire, and it further calls on the Saigon regime and the Vietcong to "achieve national reconciliation and concord" and to "end hatred and enmity." Yet for a week after the signing of the agreement, Thieu's publicists exhorted the population to kill Communists. In addition his police held the North Vietnamese and Vietcong representatives under virtual house arrest at the Saigon airport, and detained reporters who tried to see them. Then quite suddenly Thieu relented. He announced in a lunar New Year speech that his ambassador in Paris, Pham Dang Lam, would open political discussions with the Vietcong foreign minister, Madame Nguyen Thi Binh. He also conceded to let the North Vietnamese and Vietcong representatives into Saigon to attend an enlarged session of the groups involved in maintaining the cease-fire.

The first legal appearance of the North Vietnamese and Vietcong in Saigon was one of those moments that combined high symbolism and comic relief. The press was amassed for the occasion outside a mildewed villa as US Army Fords and Chevrolets, their identity painted over, brought in the delegates. The North Vietnamese officers were dressed in Soviet-style uniforms with shoulder board insignia while the Vietcong representatives wore more austere tunics and plastic pith helmets. The heads of both groups delivered short statements expressing their devotion to peace, and a North Vietnamese lieutenant colonel lingered outside to chat with reporters and collect their calling cards. Thieu's guards tolerated him, since, in the view of the Saigon regime, he represented a foreign state. But when a Vietcong delegate emerged, the government guards sought to bar him from the newsmen. The melee that ensued was in the best keystone tradition as cops and reporters shoved and pushed each other. The reporters ultimately won, and the Vietcong officer was allowed to speak. "I am optimistic that we will have peace," he said.

Thieu's decision to retreat from his earlier stubbornness was evidently prompted by three principal factors. First, he undoubtedly came under pressure from US Ambassador Ellsworth Bunker, probably the only American who can sway him. Secondly, he seems to have realized that his continued intransigence would tarnish his reputation, especially at a time when the world spotlight is focused on Vietnam. And finally, Thieu apparently perceived that he could not remain totally inflexible and let his Vietcong rivals monopolize the themes of reconciliation, forgiveness and unity.

The Vietcong has made much of these themes, and with considerable effect. While Thieu talks of eternal vigilance in his speeches, for example, National Liberation Front chairman Nguyen Huu Tho has stressed that, "the time has come for peace and love to triumph over war and crimes," adding that the Vietcong is ready to "place national interests over all." In contrast to Thieu's appeals for prolonged struggle, Hanoi has been telling Vietnamese to "dispel all animosity and suspicion . . . and without distinction between poor and rich, political affiliation and religious belief, pool efforts to preserve peace."

Significantly the North Vietnamese have distributed millions of copies of the Paris agreement, and have broadcast its contents in detail. Only a few Saigon newspapers have been authorized to publish excerpts from the document.

The aim of the Vietcong is, quite plainly, to win the sympathies of the urban population it has never been able to control through armed action. And, to a certain extent, its tactics seem to be working. Like Chinese

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intellectuals of a generation ago who turned to the Communists in revulsion against Chiang Kai-shek, some Saigon editors, lawyers, doctors and businessmen are quietly voicing their admiration for the purity and dedication of the Vietcong. One man who was nearly killed by the Vietcong a few years ago now says: "I cannot wait to welcome them into my home."

Thieu's American advisers have repeatedly urged him to move toward the center in order to broaden his base. But even if Thieu were receptive to this counsel, he could not easily follow it without jeopardizing his position. For his authority rests on the support of his generals, whose backing he has bought with commands that have given them unlimited opportunities for making money in staggering magnitudes. One of Thieu's key palace aides is General Dang Van Quang, who is sometimes known as the "Minister in Charge of Corruption." His job is to collect kickbacks from regional bosses who derive their earnings from province chiefs who in turn receive graft from district chiefs who tax the villages in their areas. Province chiefs in the second military region are each said to pay the equivalent of $10,000 per month to the region commander. The region comprises 12 provinces. Any widening of the government base would naturally dilute the power and profits accruing to Thieu's generals. For that reason they will not brook any liberal measures. But for Thieu to continue managing the country as he has will inevitably mean, in the face of the Vietcong challenge, his increasing isolation. For even if he retains the loyalty of his senior officers, the Vietcong is bound to begin making inroads into the villages and cut the ground out from under him.

One of Thieu's stratagems will be to hasten political negotiations with the Vietcong while he still feels assured of his army's support. His plan is to move quickly toward a presidential election under his present constitution. Such an election would effectively be a referendum that would have the purpose of reinforcing his legitimacy and blocking the Vietcong's attempts to play a role in a future political process. But if the Vietcong's political ambitions are frustrated, its only alternative is renewed fighting.

In his interview with CBS correspondent Marvin Kalb the other day, Henry Kissinger remarked that he does not trust the "goodwill" of the Vietnamese. Preserving the cease-fire, Kissinger said, would depend largely on the Soviet Union and China. But the past couple of weeks have demonstrated that the complicated peace-keeping machinery created by the Paris agreement cannot really operate without the "goodwill" of the Vietnamese. In the future as in the years gone by, outside forces can only be subordinate to Vietnam's internal dynamics—and those internal dynamics will determine whether the current truce can survive.

Papering over the Truth

Watergate Lies

by Walter Pincus

On Sunday, June 18, one day after early morning arrests in the Democratic National headquarters in the Watergate office building in Washington, DC, the Associated Press discovered that James McCord, Jr.—one of those jailed—had been listed as receiving payments from the Committee to Re-elect the President. Asked to comment, former Attorney General John Mitchell, in his capacity as President Nixon's campaign director, released a statement that said, "McCord is the proprietor of a private security agency who was employed by our committee months ago to assist with the installation of our security system. He has, as we understand it, a number of business clients and interests and we have no knowledge of those relationships. We want to emphasize that this man and the other people involved were not operating either on our behalf or with our consent. I am surprised and dismayed by these reports."

At the time of Mitchell's statement, according to sworn testimony given at the Watergate trial, McCord was a full-time employee of the Committee to Re-elect the President and had been for six months. His job was not only to "assist" with "installation" of security systems, but to provide information on threats or potential threats not only to reelection committee headquarters but also to campaign offices around the country. As part of his duties he regularly filed a weekly report of his activities which in turn was summarized and placed in a weekly report that was delivered to campaign director Mitchell. Furthermore McCord,

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himself, arranged for Mitchell's own security and that of his wife Martha—a task that at least on one occasion brought McCord and Mitchell together. As for McCord's other "clients," they were apparently the Republican National Committee—which Mitchell most certainly should have known.

But Mitchell's aim in releasing his statement was not to shed light on the obvious relationship between McCord and the reelection committee; it was to dilute and divert the potentially damaging effect the Watergate arrests could have on the President's reelection. In advertising terms, and many of the key men around the President are ad men, the Mitchell statement provided the main themes of what was to become the administration public relations campaign. First, separate the perpetrators from the White House; then suggest their activities were directed by some other individual or organization. In playing and re-playing these themes, White House and Nixon campaign officials used a mixture of evasions and half-truths to deceive and mislead the news media and the public on the facts of Watergate and the far-reaching political intelligence operation of which the bugging of the Democratic National Committee headquarters was just a part.

The weekend after the Watergate arrests, while Mitchell was trying to isolate McCord, the name of E. Howard Hunt turned up in a telephone pad of one of the arrested men, along with a notation for the White House. On Monday, June 19, a White House spokesman confirmed Hunt had worked as a consultant for 63 days in 1971 and 24½ days in 1972 but added that he had not been on the payroll since March—thereby appearing to separate *him* from the White House at the time of the incident. What was not disclosed at the time was that Hunt continued to have a White House pass and an office in the Executive Office Building which he *did* use at least until May 25.

The emergence of Hunt's name required comment from presidential Press Secretary Ron Ziegler, and so on June 19 another theme was developed—derogate the Watergate episode as a bungled job by a group of inept burglars. Said Ziegler: "I am not going to comment from the White House on a third-rate burglary attempt. This is something that should not fall into the political process."

By the time Ziegler spoke, however, the FBI was already looking for Hunt. And a White House staffer had gone to Hunt's office, removed the contents of his desk and taken his locked safe to a fifth-floor office where it was drilled open ("we did not have the combination," he testified) in the presence of Fred Fielding, an assistant to White House Counsel John Dean—the man who eventually ran President Nixon's personal review of the case. Two drawers of papers and a black attache case filled with wires and electronic equipment were brought to Dean's White House office the next day, June 20.

With that material in the White House, Ziegler confirmed Hunt had been a part-time consultant in "intelligence" and "the flow of narcotics" but stressed to newsmen, "we don't know where Mr. Hunt has been because he has not been involved in a consulting capacity with the White House since March." The contents of Hunt's White House office files have never been disclosed.

On June 23, Earl Silbert of the US Attorney's office introduced the issue of the checks deposited in the Miami account of another of the arrested—Bernard Barker—identifying only $89,000 but not the fact of their Mexican origin or their transfer from the treasury of the Committee to Re-elect the President to Bernard Barker. Kenneth Dahlberg, the Minnesota GOP fund-raiser whose $25,000 check also passed through Barker's account, told reporters a month later that Nixon chief fund-raiser Maurice Stans called him within days of the break-in and told him his $25,000 had been traced to the Barker account.

Also on June 23 the media—and the court—were given one of the many misstatements to come from other government spokesmen. Joseph Rafferty, the lawyer for Barker and the others who had been secretly hired and paid through Hunt, said Barker had told him the $89,000 was part of a real estate transaction that fell through. Dahlberg, when first questioned not only by the press but by the General Accounting Office, said his $25,000 came from Midwest Republicans who had homes in Florida. He later admitted it was from Humphrey supporter Dwayne Andreas.

On June 27, one week after White House Counsel John Dean first received the files and attache case from Hunt's office, Dean turned them over to the FBI. The next day John Mitchell fired G. Gordon Liddy as counsel for the finance committee (Liddy was subsequently convicted as a co-conspirator with Hunt) for refusing to answer FBI questions—though the firing was not disclosed publicly for almost a month.

With the Hunt material in the hands of the FBI, a story was published about a gun and other bugging material being found in Hunt's desk. On June 30 a Justice Department spokesman acknowledged that a gun and walkie-talkie equipment had been found but denied reports of an electronic listening device. At the trial it was disclosed the attache case contained, among other things, "two microphones simulated as chap stick containers . . . two earphones, four antennae . . . one shoulder harness with a lead wire and a phone jack. . . ." Trial testimony also placed May 25 as the date of receipt of this equipment—part of a shipment to McCord which was used at the Watergate.

In the last week of June, while the entire case was being played low key in the press and by the White House, Alfred Baldwin III, the man who monitored 200 Democratic phone calls from the Howard Johnson motel across from the Watergate, came to the US At-

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torney's office in Washington to tell his story. There was some discussion about immunity from prosecution. By July 10 an informal arrangement was made and Baldwin spent between five and six hours telling all to the FBI and the US Attorney. Baldwin's testimony not only confirmed details of the June 17 break-in, it confirmed that at least one other entry had to have been made to place the bug that Baldwin was monitoring.

On July 17 the FBI had its first session with Hugh Sloan, Jr., treasurer of the Finance Committee to Reelect the President. Sloan had resigned from the committee the previous Friday. At that session the transfers of cash to Liddy as authorized by Mitchell, Stans and Mitchell's chief of staff, Jeb Magruder, were discussed. Five days later, on July 22, the first published reports of Liddy's firing were made, along with his ties to Barker in the pre-Watergate break-in period.

On August 1 the stories linking the Dahlberg check to the Watergate case appeared. Stans denied the check helped finance the break-in, though some of it turned up in the hands of Barker after his capture.

At this point the committee's bizarre story on how five publicized checks (the four Mexican and Dahlberg's) ended up in Barker's Miami bank account was put forth: Sloan gave the checks to Liddy to cash, and according to this questionable account, Liddy later gave him back cash, less some $2500.

On August 10 John Mitchell's replacement as campaign director, Clark MacGregor, announced that the cash Liddy returned was duly accounted for in a report filed by Maurice Stans. The General Accounting Office later disputed the accuracy of that remark—a position apparently supported by the Justice Department which indicted the reelection committee for failing to account for some $25,000 of the $114,000 allegedly cashed by Liddy.

On August 18 MacGregor had breakfast with a group of reporters and conceded that some campaign funds were used by Liddy to determine what the "crazies" planned to do at the Republican convention in Miami. He identified a "security fund" of some $250,000 as the source of Liddy's financing.

On August 29 the President announced that Dean's investigation had failed to disclose any involvement of persons then employed at the White House. Mitchell, Hunt, Sloan and Liddy had all resigned. What the President did not disclose, according to Magruder's trial testimony, was that it was Dean who personally brought Liddy to the reelection committee on a Friday in early December and recommended him for the counsel job. Furthermore in that initial conversation Magruder, Liddy and Dean discussed "the potential opportunities if we had an investigative problem or intelligence gathering problems that Mr. Liddy's background [with the FBI] would suit. . . ."

In a late August issue *Time* magazine—apparently privy to information the FBI gained from Baldwin—detailed how members of a security intelligence arm of the President's reelection committee were listening to the Democrats from the Howard Johnson motel. *Time* also documented how the Mexican money went from Gulf Resources and Chemical Corporation bank accounts, through Mexico to the reelection committee and down to Barker's account. Again denials.

The GAO released its report on the Dahlberg and Mexican checks. It said that Maurice Stans along with Sloan had said all records of the finance committee prior to April 7 were destroyed. Stans and Sloan also told the GAO that there had been a $350,000 cash fund but it had been banked on May 25 and that the only transaction in cash between April 7 and May 25 was the receipt of the $114,000 from Liddy.

As subsequent court actions have shown, all the finance records from prior to April 7 were *not* destroyed—a fact GAO officials may use in a future request for legal action against Stans and others under a general statute making it a crime to falsify a federal report. Though Stans was not under oath at the time of his meeting with GAO officials, they believe the statute should apply. Furthermore, as the Watergate trial brought out, there were a *number of cash transactions* between April 7 and May 25—and perhaps even after—which would indicate further discrepancies in the information given by Stans and Sloan.

From September to mid-October the Watergate heated up as a campaign issue. On September 16 *The Washington Post* headlined the existence of a routine and legal GOP intelligence gathering operation financed out of a cash fund. A single piece of paper was said to list 15 persons who had access to the money. Stans was singled out as being aware of the fund's existence. On its face the story was a repeat—with additional detail of the GAO report and the MacGregor statements of a month earlier. Nonetheless the Nixon committee issued a strong denial that the list existed. As Sloan's testimony during the trial disclosed, he *did* keep a list of cash disbursements from the cash fund and turned it over to Stans.

The next day the *Post* said Magruder and Herbert Porter (scheduling director of the Committee to Reelect the President) each had withdrawn $50,000 from the fund. Magruder issued a denial. He declared it was "absolutely untrue" he had received any money other than his salary. "I was questioned about it [by government investigators], but it was discarded . . . and agreed by all parties that it is incorrect." Porter had no comment. At the trial Magruder testified he authorized a total intelligence budget for the Liddy operations of $250,000, and that at one point he specifically authorized an $80,000 payment. Porter turned over to Liddy, by his own testimony, some $35,000 for intelligence.

On September 20 the *Post* wrote that two top Nixon campaign officials accompanied by Robert Odle, administrative director of the Committee to Re-elect the President, spent the weekend after the Watergate

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break-in taking inventory of papers associated with the intelligence operation and shredding those that would be damaging. The story was denied. At the trial Odle testified that on the day after the break-in he showed Liddy how to operate the shredder on the third floor of the committee's offices and that Liddy had a pile of papers eight to twelve inches thick to be destroyed. Odle was *never asked* if he inquired about what the papers were or whether any other officials at the committee offices took part in determining what papers would be destroyed.

On September 29, the *Post* wrote that Mitchell, Stans and Magruder were three of five who could authorize disbursements from the cash fund "that was used to gather information about the Democrats." Testimony at the trial—brought out by questioning of Judge Sirica and not the US Attorney—disclosed that Sloan approved cash distributions to Liddy that were authorized by Magruder only after having checked that authorization with Stans and Mitchell, who was contacted by Stans.

In mid-October, the *Post* ran stories on Republican political sabotage efforts that linked in White House aides Dwight Chapin and finally H. R. Haldeman. The pattern of denials was then exchanged for specific broadsides against the *Post* and its publisher Katherine Graham who, in one Nixon committee release, was said to have told a dinner partner she was publishing the stories because she hated the President. Ziegler said the spy stories "are based on hearsay, innuendo, guilt by association and character assassination."

There is no complete sworn testimony—yet—on the spying and sabotage aspects of the Watergate story. At the Watergate trial an outline was established. Thomas Gregory, a college student recruited by Hunt to spy on Democrats, was asked to report—and did—on such matters as scheduling, speech topics, campaign workers and areas of expertise, conflicts within the campaign organization and large contributors.

By sticking to the public relations themes adopted in September, the administration was able to keep facts of the Watergate case muted. The attacks on the *Post*, reinforced by earlier general criticism of the media, further confused the public in measuring the credibility of sworn facts as they emerged from the trial. In short the administration had successfully raised doubts as to the media's reliability in matters in which—as the trial proved—the press was telling the truth. The long-term damage of such a cover-up may be far in excess of the Watergate venture itself.

Absentee Owners of America—V

Other People's Money

By Wright Patman

The great monopoly in this country is the money monopoly.
Woodrow Wilson (1911)

Six decades later, it's still true. Under a massive public relations cover, large commercial banks have crept into every crevice of the American economy. They control assets of nearly one trillion dollars, more than four times the assets controlled by life insurance companies and nearly 20 times the assets controlled by mutual funds.

The following table illustrates the dominance of commercial banks:

ASSETS OF INSTITUTIONAL INVESTORS, 1971

(billions)	Amount	Percent
Total investable assets controlled by commercial banks:	$ 913	59.2
a. Financial assets	577	37.4
b. Trust department assets	336	21.8
Mutual savings bank assets	89	5.8
Savings & loan association assets	206	13.3
Life insurance company assets	222	14.4
Other insurance company assets	55	3.6
Mutual fund assets	57	3.7
	$1.532	100

Rep. WRIGHT PATMAN (D. Texas) is chairman of the House Banking and Currency Committee

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The concentration of economic resources of this magnitude would be serious enough by itself, but the problem is aggravated by the multiple functions and powers of commercial banks. Banks are quasi-monopolies. Their basic product, credit, is the lifeblood of commerce; their power to grant or withhold this commodity is a source of built-in intimidation that hangs over all areas of the economy. But credit is only part of the story. Commercial banks have developed new muscle through the accumulation of wealth in their trust departments and through the control by bank holding companies of nonbanking enterprises. These three sources of control—credit, trust departments and holding companies—are strengthened by the web of interlocking directorships between commercial banks and other enterprises.

Beginning in 1965, the staff of the House Banking and Currency Committee began exploring the ways in which large banks exert control over competing smaller banks, other financial institutions and nonfinancial corporations. These and other studies have shown that: 1) major banking institutions, through their trust department investments and interlocking directorship connections, have the potential for controlling a significant part of our economy; 2) trust department assets are heavily concentrated in a handful of large banks; 3) bank trust departments are the principal element in the growing dominance of the stock market by institutional investors.

Look at some basic facts. For the largest 49 banks surveyed in 10 major cities, there were found to be over 8000 interlocking directorships between these banks and more than 6500 companies. More than 750 of these interlocks were with 286 of the 500 largest industrial companies in the United States. The same pattern of interlocking relationships was discovered between these 49 banks and each of the 50 largest merchandising, transportation, utility and life insurance companies. It is absurd to think that banks ignore the holdings of their trust departments when they face major loan decisions. It is equally absurd to think that a bank will ignore the needs of its holding company subsidiaries.

During much of 1971, the governments of Great Britain and the United States became extremely nervous about the fate of the Lockheed airbus. Hurried bailout efforts were launched for Rolls Royce, the producer of airbus engines in Great Britain, and for Lockheed, the builder of the airframe in the United States. Behind all the rescue efforts were some of the nation's largest commercial banks, whose lobbyists swarmed over Capitol Hill on behalf of the loan guarantees. The tracks of the banks—led by Bankers Trust and Bank of America—were found at every turn. First, the banks had $400 million out in lines of credit to Lockheed. Then it was discovered that many of the same banks also had lines of credit out to subcontractors on the airbus project: $329 million to AVCO, $125 million to Sperry Rand, and $104 million to Collins Radio. As the covers were pulled back still further, we learned that the banks were also creditors to the airlines that were to purchase the airbus. Eastern Airlines, scheduled to be a major purchaser of the jet, had borrowed $55 million from Chase, $33 million from First National City Bank, $10 million from Bankers Trust, and $9 million from Morgan Guaranty. TWA had Morgan Guaranty and Irving Trust as major creditors. Delta, another prospective airbus customer, had huge loans out from Citibank, Manufacturers Hanover, Bank of America and Morgan Guaranty. And behind the heavy lines of credit were substantial holdings of airline stock in the bank trust departments.

Were the airlines' decisions to order the airbus based solely on their needs, or were these decisions influenced by the fact that their creditors—the major commercial banks—had poured hundreds of millions of dollars into Lockheed? And was the government's decision to salvage the airbus based on a need for that airplane, or the political power of commercial banks?

The Lockheed case rose to the surface because of serious internal troubles. But the same type of bank domination is evident in other major corporations. In 1967, the House Banking and Currency Committee conducted the first detailed study of bank trust departments. The following were the holdings in a random selection of companies by just three commercial bank trust departments:

Morgan Guaranty, the country's largest bank trust department:

Xerox, 9.7 percent; Polaroid, 5.5 percent; Burlington Industries, 14.5 percent; Olin Mathieson, 6.8 percent; Celanese, 7.5 percent; American Smelting and Refining, 15.5 percent; and, Kennecott Copper, 17.5 percent.

Chase Manhattan:

Boeing, 8.7 percent; Reynolds Metals, 5.5 percent; National Steel, 6.2 percent; Sperry Rand, 5.1 percent; Texas Instruments, 8.9 percent; CBS, 5.9 percent; Aetna Life, 5.0 percent.

Mellon National Bank of Pittsburgh:

Gulf, 17.1 percent; Alcoa, 25 percent; Jones and Laughlin, 6.9 percent; Allegheny Ludlum Steel, 5.1 percent; Koppers Corporation, 18.5 percent.

All told, commercial banks currently hold more than $330 billion in trust assets, constitute the largest single block of institutional investors, and their dominance as institutional investors is rising. About 70 percent of the assets of pension funds are now managed by bank trust departments. As these funds rapidly grow, the economic power of the banks increases accordingly. The Glass-Steagall Act, passed by Congress during the 1930s to divorce investment and commercial banking, has not done the job.

Concentration of control is intensified by the fact

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that half of the $330 billion in bank trust assets resides in 20 banks. Moreover, the banking industry has witnessed a vast wave of mergers during the past 20 years. Between 1950 and 1965, over 2200 bank mergers took place, despite passage in 1960 of a weak Bank Merger Act. Seven hundred and sixty-five of these bank consolidations took place after passage of the 1960 act. In New York City, the banking capital of the world, 38 percent of all commercial banks disappeared as the result of consolidation between 1950 and 1960.

In 1966, Congress finally adopted a strong anti-merger act in the banking field. This has slowed major bank mergers in the last seven years, although a significant number of consolidations among smaller banks continue to occur, averaging a little under 200 per year. The result is concentration not only of assets held in trust, but of the basic lending resource of all banks—other people's money. In 1966 the 50 largest commercial banks held 44 percent of the deposits of all commercial banks in the United States. By the end of 1971 that figure had risen to nearly 50 percent.

One of the favorite pastimes of concentrated financial power is promoting concentration in nonfinancial industries. There is substantial evidence that the major commercial banks have been actively fueling the corporate merger movement. A 1971 congressional report, for example, found that major banks financed acquisitions, furnished key financial personnel to conglomerates, and were even willing to clean out stock from their trust departments to aid in takeover bids. Thus, Gulf and Western, one of the most aggressive conglomerates of the 1950s and 1960s (92 acquisitions involving almost a billion dollars in eleven years), expanded hand-in-glove with Chase Manhattan. Friendly representatives of Chase made funds available and provided advice and services that assisted Gulf and Western in its acquisitions. In return, in addition to the customary business charges for Gulf and Western's accounts and loans, Chase secured banking business generated by the newly developing conglomerate that formerly had gone to other banks, and was a recipient of advance inside information on proposed future acquisitions.

Commercial banks have themselves expanded into extraneous fields. Commercial bank holding companies are rapidly moving into mortgage banking. They have been permitted by the Federal Reserve Board on a limited basis to become investment advisers to mutual funds. They have begun to enter consumer finance through the acquisition of small loan companies. They are rapidly moving into long-term leasing of airplanes, railroad equipment and oil tankers. They are now permitted to engage to some extent in selling insurance and data processing services. They have for several years used every political device imaginable to change the law to permit them to underwrite municipal revenue bonds. And they are entering a wide variety of businesses in their foreign operations, including air freight, warehousing, the manufacture of construction equipment, corporate underwriting, mutual fund sales, and speculation in real estate and commodities. It is difficult today, and will become even more so in the future, to insulate these foreign-based activities—which would be illegal if carried on by these same banking institutions in the United States—from strictly domestic operations.

COMING: What remains to be done in the second round of SALT talks

Through the Bank Holding Company Act of 1956, and amendments adopted in 1966 and 1970, Congress has tried to slow the movement of commercial banks into nonbanking enterprises. Originally, Congress left a loophole which allowed holding companies with only one bank to go unregulated. This loophole was closed in 1970 in one of the bitterest fights in the history of banking legislation. But the agency charged with administering the restrictions on bank holding companies is the Federal Reserve Board, an agency whose constituency is the big banking and big business community.

Some of the steps which should be taken to stem the banks' growing power are:

► Retain and strengthen the strict separation between commercial and investment banking.

► Separate the banks' trust department activities from the commercial functions of deposit-gathering and lending. We should give serious consideration to establishing separate and independent management groups for the exclusive purpose of managing pension funds.

► Require banks to remain in the banking business and resist any attempts to permit a broadening of their activities into nonbanking areas.

► Consolidate regulation of institutional investors within the Securities and Exchange Commission.

► Maintain a strict enforcement policy in applying the antitrust laws to banking.

► Eliminate all interlocking relationships among competing financial institutions, *i.e.*, among commercial banks and between commercial banks and insurance companies, savings and loan associations and mutual savings banks.

► Eliminate interlocking relationships between commercial banks and all major nonbanking corporations.

► Investigate in detail the role that commercial banks play, through their lending, investment and other activities, in fostering increased concentration in other industries.

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A Reply to Arthur J. Goldberg

The Overworked Court

by Alexander M. Bickel

The statement that "'overwork' requires a major change in the jurisdictional authority of the Supreme Court suffers from what Churchill used to call 'terminological inexactitude,'" former Justice Arthur J. Goldberg said in these pages last week. A study group appointed by Chief Justice Burger and headed by Professor Paul Freund of Harvard recently found that the Court is overworked, and recommended relief. Justice Goldberg does not quarrel with the statistics cited by the study group. It is just that the work of examining the thousands of petitions for review that now come to the Court is not very difficult, Justice Goldberg maintains, since most of the petitions present cases that are clearly not worthy of Supreme Court review; and in any event the justices have law clerks to help them with the task, even though "every justice does his own work and makes his own decisions whether in passing on applications for *certiorari* or in deciding argued cases."

Well, there are currently upward of 62,000 appealable decisions made annually in federal district courts throughout the country, an increase in the last seven years of over 100 percent in criminal matters decided, and over 50 percent in civil. Nearly 15,000 of these cases are then decided on appeal in the regional federal courts of appeal. Out of this mass of cases, plus a substantial body of additional decisions in the state courts, a number nearing 4000 now finds its way to the Supreme Court of the United States. This number itself, incidentally, has grown from several hundred in the late 1920s. It has increased fourfold in the last 35 years, and threefold in the last 20, and there is no letup in sight. The Supreme Court picks some 150 cases, give or take a dozen, each year to hear and decide in plenary fashion. It tries to pick the ones that are of greatest importance from a national point of view. But somebody's fate hangs in the balance in each of these nearly 4000 cases and none of them should be regarded as trivial, even though very few can be decided by the Supreme Court. These 4000 cases or so are self-selected, to be sure, but it takes considerable doing, and considerable expense, if one can afford it, to get up to the Supreme Court. Hence the 4000 have to be regarded as something like the cream of the crop, and choice among them ought to be exercised with care.

As of the moment, some 70 cases arrive every week. At an average of half an hour a case, 70 cases would take half of a very heavy working week. At 15 minutes a case, two good working days. Some cases may take less time, and some may even be fit for disposition, as Justice Goldberg says, by a third-year law student, but even so, all must claim the attention of each of the nine justices, not of third-year law students, and we are talking about averages. There is staff help, to be sure, but as professor Freund remarked recently, when the late Justice Brandeis was asked how he explained the great prestige of the Court, he replied, "because we do our own work." Astonishing as the phenomenon may appear in Washington, the justices have done their own work in the past, and do it now, and the burden is crushing. Justice Goldberg says he managed when he was on the Court. The volume of petitions then ran between 2300 and 2400 a year. There are better than 1000 more now, and the justices still manage, but not, the study group surmised, without some inroads being made into their other tasks, chief among them, of course, deliberations and collegial consultation on argued cases, and the writing of opinions in them.

Justice Stewart told the *Harvard Law Record* a few weeks ago, says Justice Goldberg, that the case load is not intolerable and not impossible to handle. I think Justice Stewart chose his words—"intolerable," "impossible"—with care, and I should certainly like to see the context in which that single remark was made. Justice Douglas took occasion in a recent dissent to say that the Supreme Court is underworked, and disposes of vast leisure time. Justice Douglas' view is not unfamiliar. He has been on the Court for 34 years. He has double the experience of the next senior justice. And he is endowed with a singular capacity and willingness to do rapid work. People may be divided on the question whether it would be a good thing to have a Court of nine Douglases, but there can be no dispute that we do not have such a Court, and are not likely in the future to see one.

The new national court of appeals recommended by the study group to be established under the Supreme Court would initially examine the thousands of cases clamoring for attention, eliminate those that are least important, hear and decide some itself, and send the

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rest—which would be a manageable number, down again in the hundreds—to the Supreme Court, which would then finally choose the 150 or so to be heard and decided in plenary fashion. Now, when the Court is at saturation point, and more importantly in the future, when if nothing is done now the pressure will reach crisis proportions, this proposal would free the Court for performance of the great task which it alone can perform—the deliberate, reasoned, collegial declaration and elaboration of national law.

The proposal is workable. It would in itself hurt no one, and would help everyone as it helps the Court. There has been a gradual narrowing of access to the Court throughout history, as the country grew and the volume of business grew with it. That cannot be helped. It is a fact of life. This proposal takes the minimum possible measure necessary to cope with the continuing growth of business. It reforms in order to conserve. Of course, it makes a modest change in procedures that have been familiar for nearly half a century. But these procedures are no older than that; and they were in their turn resisted as strange and new when they were introduced. There is always a tendency, as the late Justice Frankfurter once said, to canonize the familiar into the eternal. That is perhaps natural, but it is unwise. By sticking with the familiar form in this instance, we will lose the substance, as one of our most precious institutions is gradually disabled from performing its historic function.

Justice Goldberg fears that various cases, particularly those involving rights of criminal defendants, in which in recent years the Supreme Court reexamined what had seemed to be settled law, will never reach the Court under the study group proposal. The national court of appeals, he suggests, when it examines a case of this sort, will see that the previous law is settled, will have no reason to believe that the Supreme Court is ready to reexamine it, and will therefore eliminate the case and not bring it to the Court's attention at all. The fear is groundless. No one need worry that these experienced judges will not know that the Supreme Court sometimes reverses itself, sometimes upsets seemingly settled law, sometimes strikes out in new directions. They will know also, as the profession does now, that such events do not come altogether unexpectedly, out of the blue. As the study group, which considered this problem, said, "the Supreme Court's readiness to reopen what had seemed to be settled issues, its impatience with, or its interest in, one or another category of cases—all this, we think, would be acted upon." In not one of the major cases mentioned by Justice Goldberg can it be remotely imagined that the Supreme Court would not under the new, proposed system have had its opportunity to make the law it made.

Justice Goldberg also suggests that the proposal may violate the spirit or even the letter of the Constitution, which creates *one* Supreme Court, not one plus another to help it. But the argument rests on a word play. The history of the Supreme Court, naturally enough, has been the history of the progressive cutting down of its jurisdiction as the country grew, for it has always been true, as it is true now, that there is only so much that a single court can do. Congress, which is vested by the Constitution with the authority to regulate the jurisdiction of the Supreme Court, has regulated it throughout history so as to keep the docket at a manageable size by including and excluding whole categories of cases. Thus until 1891, there was no appeal to the Supreme Court in criminal cases, and then for a long time only in capital criminal cases. In all categories of excluded cases, the decision of a lower court was final, and in making such a final decision one could say, if one wished, that that lower court acted as a Supreme Court.

Congress also provided that certain cases come to the Supreme Court only if certified for appeal by the lower court which had decided them. That is precisely the function that the new national court of appeals will perform, and one could have said that the certifying court acted as another Supreme Court. But nobody said it, because quite plainly the provision for one, final, ultimate Supreme Court cannot be read to mean that all cases must be decided in it on appeal, or the institution would have burst a long time ago. Nor is there anything in the Constitution to suggest that the Supreme Court has to have the power to decide for itself what it shall decide out of an unlimited mass of possible cases. The power to decide cases, said Justice Goldberg, would seem to presuppose the power to determine what cases will be decided. It has seemed so for the last 50 years, but it has not been so through the greater part of the history of the Republic. Judicial power to determine what cases will be decided was an innovation made by Congress for the convenience of the Court in 1925. There is nothing constitutional about it. And at any rate, the study group proposal retains a substantial portion of it in the Supreme Court.

But the spirit of the Constitution is, says Justice Goldberg, greater than the letter, and the spirit is that it is the birthright of Americans to take claims involving their rights to the Supreme Court of the United States. Yes, in the words with which Hemingway's *The Sun Also Rises* ends, yes, it is pretty to think so. But it is not true. It cannot be true in a nation of 220,000,000 people populating the better part of a continent, and served by one Supreme Court.

It would certainly be preferable to let things stay as they are. Change simply for the sake of change is an abomination, particularly in the judicial branch of government, whose stability, more even than that of other branches, is one of the great sources of its strength. But as the study group said, "relief is imperative, and among possible remedies, none of which is perfect, this appears to us to be the least problematic."

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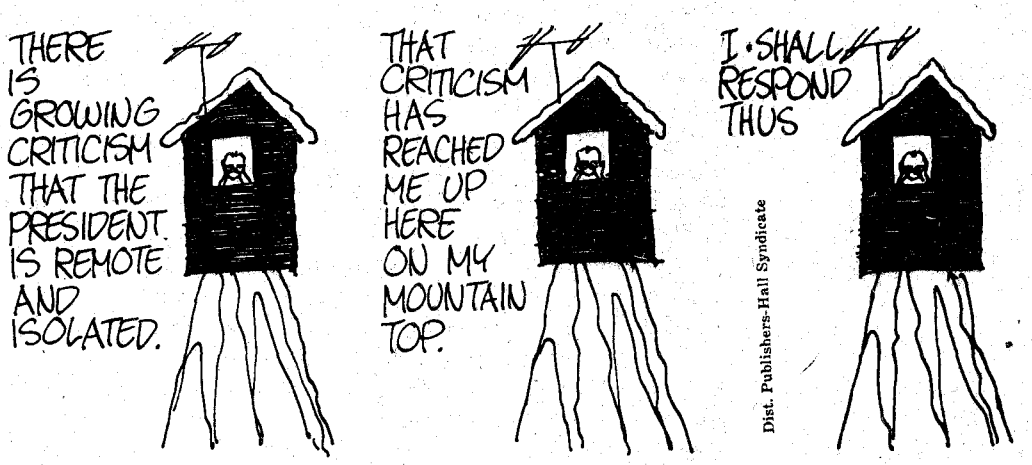
JULES FEIFFER


THERE IS GROWING CRITICISM THAT THE PRESIDENT IS REMOTE AND ISOLATED.
THAT CRITICISM HAS REACHED ME UP HERE ON MY MOUNTAIN TOP.
I SHALL RESPOND THUS
Dist. Publishers-Hall Syndicate

I WON THAT ELECTION BY THE SECOND LARGEST PLURALITY IN THIS NATION'S HISTORY.
SO AS I SEE IT I HAVE A MANDATE FOR ISOLATION.
WHEN I COUNT TO A HUNDRED I WANT YOU ALL TO BE GONE

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Robert Brustein on theater

Violations of Silence

London

An unexpected side effect of Samuel Beckett's contribution to the modern stage is that he has made most other playwrights seem long-winded. While Beckett's plays approach closer and closer to the condition of silence, the works of many of his contemporaries seem like violations of that silence, having been filled with noise and chatter on the principle that the less there is to say, the longer it should take to say it. One of the peculiar conditions of modern life is that it stimulates either very long theatrical statements or very short ones—concise metaphors by poets who try to essentialize experience, or repetitious realism by prose writers who prefer to represent it. (True, O'Neill was able to will his repetitiousness into poetry in his last plays, but, by his own description, most of his "faithful realism" was a form of stammering.) The documentary film should have released stage writers from the compulsion to represent; but representationalism still exercises considerable power over playwrights, with the result that the spectator is forced to suffer trials of endurance in the theater that he would barely notice in the movies. I am going to stick my neck out and declare that unless the playwright is motivated by a profound emotional conviction or an original idea, all new plays ought to be brief. The drama must be able to justify itself on the basis of precision of means or risk the spectator's mounting displeasure, for if a play is long because a writer is form-deaf, then the discomforts of the theater become unacceptable.

I mention this because two new fringe offerings in London—Tom Gallacher's *Revival* and Terence Greer's *Ripper*—though different in every other way, share the common fault of being badly planned and overwritten.

Revival doesn't seem to have any respect for silence at all. It is overflowing with literary conversation, backstage chit-chat and highfalutin verbosity, as well as arch Molnaresque flirtations with the audience through the fourth wall. It is Molnar rather than Pirandello that the author brings to mind because *Revival* has the same enclosed theatrical self-consciousness as *The Play's the Thing*. In *Revival*, the hero is an aging, reclusive Ibsen actor who, having learned that he is suffering from a mortal disease, decides to conclude his career during a performance of *The Master Builder*, in which he is returning to the stage, by leaping 60 feet from the scaffolding. After three acts of preparation for this exhibitionistic death, the hero is persuaded by his estranged wife and daughter (both actresses) to go on living for the sake of his talent—the absentminded author having apparently forgotten that his hero has a fatal illness which makes this inspirational decision just a little meaningless. In the soap bubble conclusion, both women offer to join the actor in his next production, thus proving, as my companion observed, that a family that plays together, stays together.

Ripper is excessive in a different way, violating silence not so much by its whimsical language as by its boisterous action. Described as a musical version of the Jack the Ripper story (leading me to expect villains in opera cloaks, can-can choreography and brassy songs by buxom doxies), *Ripper* turned out to be considerably more interesting in conception, though marred in execution by the absence of a formal intelligence or judicious editor. The theater where it is playing is festooned with hanging laundry and period posters to give it the look of a Whitechapel brothel, bar or music hall. And within this Victorian environment, a brigade of sailors, soup kitcheners, laborers, policemen and prostitutes (one of them 10 years old) provides atmosphere by haranguing the audience and barraging it with orange peels. Period songs—most of them caterwauled with an impudent lack of musicality—are interspersed among episodes from 19th-century life, including anarchists addressing East End political meetings, "greeners" being exploited in Jewish sweatshops, down-and-outs huddling for warmth in crowded flophouses and even Queen Victoria worrying at Windsor over her paretic grandson, the Duke of Clarence.

Meanwhile, a number of women are being brutally slaughtered and disemboweled, each by a different suspect, giving credence to the various theories about the identity of Jack the Ripper, along with extended acting opportunities to the male members of the cast. After an appetizing concluding scene which shows us a man in a butcher's straw hat dismembering a female victim and preparing her liver and kidneys for his breakfast, we are sent away with the impression that the real villain may be none of the historical suspects but rather that abstraction called Society. Although this conclusion has the advantage of being coherent, it is not very intelligent. If everybody is guilty, then nobody is guilty, and psychopathology becomes merely a branch of sociology. I left the theater disgruntled that so much careful research had been wasted on such a confused, unformulated project, and so much athletic talent dissipated in the noisy tumult.

Killer Whales

Those I vainly wish to meet are like the whales.
I can hear their every breath loud as if near
Across the iris straits. First they exhale
With the bass rasp of a shovel digging a grave.
Then take in before the dorsal fin splits the sea
To cordwood above their head. It is a gasp.
They lift the cover. It has all been headfirst
For them, past my hillsides that are mum and footsore.
Rocks breathe motionlessly through their topmost fraction
Like volumes of frozen reports of whales' rolling
In and out of blue rings, Saturns upon whose home
The closest astronomer will never walk.

SANDRA MCPHERSON

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Doris Grumbach on teaching writing

Hired Sympathizers

Breadloaf Writers' Conference at Middlebury College, Vermont is still alive and well after 40 years. The University of Iowa's Program in Creative Writing has been thriving since 1943. Johns Hopkins' Seminar in Imaginative Writing and the Creative Writing Center at Stanford University are still attracting students after almost 30 years. From these seedbeds, and predicated on the theory that writers can teach other would-be writers to write, literally hundreds of programs and courses have been established in colleges and universities. Now we have a gathering of these personnel and programs, a kind of holding company, called the Associated Writing Programs. And to make the whole thing official and provide it with a federal stamp of approval, the Library of Congress last month invited everyone listed in college catalogs as teachers of writing to come to a conference in Washington to discuss the problems (and, presumably, the pleasures) of the profession. More than 500 persons responded; the two-day convocation was full of brave talk and even braver reservations, admissions of guilt and statements of self-justification that were, more often than not, troubling to the outsider.

What was troubling, as one listened to panel after panel of teachers who were also, in the main, writers, was that if the speakers were to be believed—and they included such luminaries as John Barth, Wallace Stegner, Margaret Walker, Ernest Gaines, George Garrett, John Ciardi and Ralph Ellison—only about one percent of those who enroll in creative writing courses become good writers, or writers at all. The other 99 percent are lured into the courses by the imagined glamor of the profession of letters, or by the desire for money and fame.

A corollary to this nagging doubt about the success of such teaching was the admission, which escaped from one speaker after another at odd moments—and only after stalwart positive statements were made that teaching writing *was* possible—that no one knows very much about the teaching of writing, that a talented person can be taught almost nothing (and indeed, someone said, only occasionally turns up in a creative writing class), and that the talentless can be taught only a little. John Barth mourned the silent majority, those who sit in a class in fiction-writing and never write anything because they're not good enough. He was reminded of the question asked by an eager student: "How can I become a good writer?" and the reply, "By being born again." Paul Engle, acknowledging that talent is not made but only hurried along, wondered if you could teach a poet. He suggested a response: "Yes, you can. You can take him when he's young, insecure, and worried, and make him old, insecure, and worried."

Another doubt arose when Wallace Stegner openly discussed the "dubious enterprise" of luring students to graduate schools with grants to prepare for entry into a market of fiction and poetry that "barely exists." Unlike other academic enterprises, which have been cutting back in order to adjust production to diminishing demand and need, there has been no attempt to limit those who wish to be writers, even in the face of the continuing shrinkage of outlets for both poetry and fiction.

Despite all these left-handed, somewhat *sotto voce* admissions, the teaching profession has not given up. Securely entrenched in their professorial seats, the creator-teachers seek comforting secondary justifications that could keep them profitably at their work. For one thing, there are fringe benefits. Most writing programs involve a good deal of reading. Louis Rubin pulled back far enough to say that the primary goal of writing programs is *not* to turn out professional writers; rather it's a kind of cognitive therapy, to help young people discover what they know about their world and themselves: "Whether or not they become professional writers doesn't matter at all."

Robie Macauley, who has taught and still teaches writing but is also fiction editor of *Playboy*, invited the conferees to consider the side-effects of teaching writing to students who, giving up the spectral hope of being writers, will then, because of their education from the inside of the craft and their greater awareness of the difficulties and problems it entails, "make great audiences." Clearly there is economic benefit in building a reading and book-buying public by sharpening the sensitivities of the 99 percent. Perhaps spiritual benefit can be found also, but there remains the difficulty that such readers will tend to make only a professional audience. Writers reading other writers do not provide a clear formula for helping poetry and fiction to break out into the realm of the great audiences that Whitman talked about.

The teachers addressed themselves to the (to them) very real problem of what to do actively about those who will never be able to write, despite their strong motivation. One nasty fellow's direct approach to the problem was cited: he inquired of the student's father's occupation, and then encouraged him to follow in his parent's footsteps. Another more compassionate approach (sharply criticized by Ciardi and Stegner) is total permissiveness. In such courses the instructor abdicates, giving his students their heads, liking everything his eyes light upon. These "indulgent fellow-travelers," full of encouragement and patience, the good-guy teachers, gather large classes, while the hardheaded bad guys drastically reduce the attendance in their classes. Paul Engle called for the use of "honest sympathy" as the best approach to eliminating a bad writer. Engle, lamenting the death of a wide market for poetry, also called for the establishment of a national poetry magazine financed by the government. A young novelist and writing teacher at Johns Hopkins, Michael Lynch, said no, in thunder; he opposed such a magazine because chances are good the editors of it would hold as arrogant a set of opinions about form and content as the panelists.

Although some of the academic listeners booed Mr. Lynch, it was evident that the conference, which began with the assumption that there was a point to the teaching being done, and a discernible way to do it, ended in a tangle of questions: do the ends justify the enormous paraphernalia which has grown to be the means? Are the results ("great audiences," increased sensitivity, etc.) pertinent to the aim, the production of writers? Is the best the teacher of writing can hope for that he doesn't impede the talented writer's progress or "get in his way"? How often is the teacher-writer, necessarily limited by his own sense of style, wrong in his

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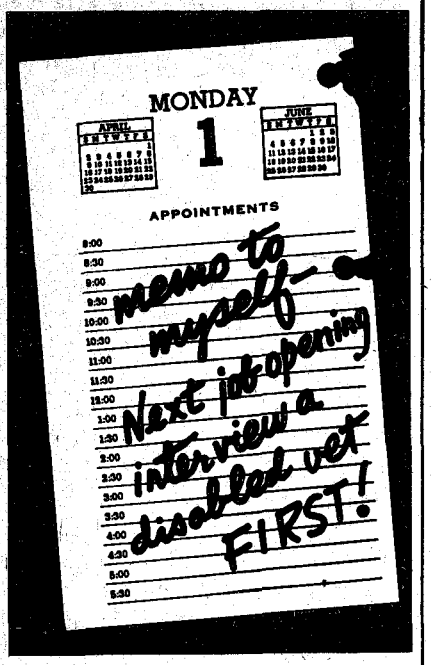

The President's Committee
on Employment of the Handicapped
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judgment that the student before him is hopeless? (It was curious, in this respect, that self-doubt about their own judgments was not one of the overriding considerations of the teachers at the meeting.)

John Ciardi gave the profession its accolade when he said that "a teacher is hired sympathy." The outsider could only wonder at the high cost of the hire, and the value, ultimately, of the therapy.

He Left at Half Time

The Politics of a Guaranteed Income

by Daniel P. Moynihan

(Random House; $10)

In lively fashion Pat Moynihan exhaustively recounts the praise President Nixon received from all corners for his initial bold step in proposing a guaranteed minimum income, and while taking detours to explain how Congress works or fails to work, gives us an almost day-by-day account of welfare reform's progress through 1969 and 1970. It's a fascinating story.

Unfortunately, the book ends with Moynihan's departure from the White House, thereby ignoring the last two years of the battle. I can understand why Moynihan cuts it off where he does, but I cannot agree with his view that welfare reform was dead by the end of 1970 and that 1971 and 1972 were merely anticlimactic. Moynihan left at half time. Much more was said and done before welfare reform eventually died.

Not only does Mr. Moynihan bury the victim prematurely, he fingers the wrong killer. It was not the liberals. Yes, at times a few flirted with the anti-Family Assistance Plan (FAP) rhetoric of the National Welfare Rights Organization. They nevertheless supported FAP with their votes on the Senate floor. Nor should one blame only the conservatives. They composed a bloc—but not a majority bloc—that had always opposed the Family Assistance Plan.

The obstacle to reform—not identified by Moynihan—was the Nixon administration. Amid all the rhetoric about fathers deserting their children, the President deserted FAP, though he had supported it in 1969 and early 1970. It perished in 1972 from lack of nourishment by the White House.

The Family Assistance Plan was not the child of this administration in the first place. The principle of a guaranteed annual income had been discussed for over 30 years. As former HEW Secretary Wilbur Cohen has pointed out, President Roosevelt's public assistance proposals in 1935 urged that the minimum welfare payment had to be an amount determined to assure "health and decency." This language was knocked out at the insistence of the elder Senator Harry Byrd who argued that a federally guaranteed minimum income interfered with states' rights. In 1949, President Truman sent a bill to Congress proposing for the first time that the working poor be covered in the public assistance system. Advisory councils in 1959 and 1966 both proposed coverage for the working poor as well as some sort of minimum income level as part of welfare reform. The Moynihan view, then, that FAP was a quantum leap forward in social policy, is true only to the extent that a conservative President had adopted it.

A guaranteed annual income was also the core of a detailed set of recommendations developed by the Commission on Income Maintenance Programs (Heineman Commission) which was initiated by President Johnson. Johnson recognized, as did the commission members, that most of the anti-poverty programs skirted the edge of the real poverty problem—lack of money. The question was: how to alleviate poverty while retaining the incentive to work for those living near poverty, and that required long and careful study. The

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Heineman Commission devoted some 22 months to that question and concluded in 1969 that a family assistance-type approach was needed.

With the Nixon administration newly arrived in 1969, and while the Heineman Commission was putting the final touches on its recommendations, Pat Moynihan entered the scene as the supersalesman of income maintenance, quickly grasping the details and philosophy of the Heineman Commission. It was Moynihan who, to his great credit, sold the Family Assistance Plan to the new President, pointing out that this single program could outdo all the anti-poverty efforts of the 1960s. The President was receptive not only because he saw a way to win over the liberals, but because he had his eye on history. He could establish his credentials as a compassionate spokesman for the downtrodden.

As originally conceived, the Nixon proposal set a floor under income and provided income supplements to the working poor to encourage them to work rather than go on welfare. FAP would have ended the bifurcated state-federal system of 54 welfare jurisdictions, 1152 separate administrative units and a maze of differing federal and state rules, replacing that with a streamlined, uniform and efficient federal system of rules, payments, child care and work training.

In April 1970, the bill passed the House of Representatives by a vote of 243-155, having emerged from the Ways and Means Committee with a closed rule which prevented amendments from the floor. The bill then came to the Senate where it was considered by the Senate Finance Committee, whose membership heavily reflects southern and rural America. I was one of the few members of this committee with a decidedly urban constituency.

The bill never came out of the Senate Finance Committee intact. The administration's spokesman—then Secretary of HEW Robert Finch—was no match for the ranking Republican of the Finance Committee, John Williams of Delaware, an able conservative. Williams picked away at the bill and, as he picked, the administration made changes to mollify the conservatives. The changes in turn angered various groups supporting welfare reform, such as Common Cause, the AFL-CIO and the League of Women Voters. But Moynihan is wrong when he says that the demands of liberal supporters soured the Finance Committe member-

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ship on welfare reform. It was never in the cards that the Finance Committee, given its membership, would approve the President's initial bill. The committee's actions since Moynihan left the White House prove this.

The Finance Committee did recognize the need for some sort of reform late in 1970, but the Nixon administration failed to take advantage of this opportunity. As the year came to an end, it was apparent that no time remained to pass a major proposal in the Senate, much less get it through a Senate-House conference. Debate was heated about the impact of implementing the program nationally, especially in view of the administration's inability to answer Senator Williams' probing questions. I proposed to pilot out welfare reform for two years before putting it into effect nationally. The idea was well received by the Finance Committee—but not by the administration. At this point the White House wanted all or nothing, even though such staunch opponents as Senator Williams were willing to spend as much as $500 million to give FAP a generous test. It all became snarled in a legislative tangle and no one got anything.

It is at this point that Moynihan's book takes leave of the battle. He argues that the next two years add little to the story, since the liberals had already killed FAP once and for all by the end of 1970 by flirting with the proposals of George Wiley—the articulate spokesman of the National Welfare Rights Organization. Wiley's group, made up mostly of welfare mothers from high-payment welfare states of the Northeast, had upped the ante so high—$5000 a year for a family of four (later raised to $6500)—that few senators took him seriously. (Wiley ignored the fact that FAP would have doubled or even tripled the income of many poor blacks and whites in the South.) No one was seriously arguing that 100 million people should be on welfare at a cost of $80 billion. Moynihan's thesis that the "perfect" ($5500) was the enemy of the "good" (FAP) and killed reform is erroneous. Despite the NWRO rhetoric, liberals still basically supported FAP, conservatives opposed it, and the moderates looked to the administration for guidance. Everyone engaged in the battle of the next two years has his own perceptions of what went wrong, but one thing is clear: after Moynihan left the White House, the leadership expected of the Nixon administration

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was not forthcoming.

The Family Assistance Plan, coupled with Social Security and Medicare legislation—quickly reintroduced in early 1972 as HR 1—was given "top priority" by the President among his legislative goals. FAP's champion supporter became HEW Secretary Elliot Richardson who quickly developed into an ardent and eloquent spokesman for the bill. But, as was soon demonstrated, he did not have the access to the President which Moynihan had had; there was no one in the White House to fight day-by-day for FAP. The long, slow process of defusing support for FAP began in the White House. The Ehrlichmans and Haldemans were now fully in control of domestic policy and did not have to deal with the liberal gadfly—Pat Moynihan.

In June of 1971, HR 1 had passed the House and again come to the Finance Committee where supporters were optimistic. Senator Williams had retired. The one-and-a-half-years remaining in the session allowed plenty of time to enact the bill. Meanwhile the welfare crisis had worsened. Welfare rolls were going up and the states, feeling the financial pinch, began to clamor for relief. The fact that a politically popular Social Security benefit increase was attached to the bill gave added hope. No one expected the Finance Committee to support FAP, but we expected to add it as a floor amendment when HR 1 was reported to the floor of the Senate.

In late July and early August of that year the Finance Committee held four days of hearings with administration witnesses. At that time, the bill I had introduced on July 22 broadening the administration's program was also discussed. It was attacked by conservative members as too expensive and by the NWRO and similar organizations as too meager. Nevertheless it won the support of Common Cause, UAW, AFL-CIO and the League of Women Voters.

Following the hearings Congress adjourned for its August recess and the Finance Committee promised to take up the bill as soon as Congress reconvened in September. Plans were abruptly changed, however, when President Nixon announced his new economic policy on August 15, 1971. At that time he asked that implementation of welfare reform be delayed a year. The sense of urgency was dissipated. The Finance Committee was forced to take up the President's new economic program during the remainder of 1971.

Support for welfare reform was obviously dragging. Something needed to be done. The Republican governor of Massachusetts, Francis Sargent, in the fall of 1971 circulated a welfare reform proposal at the Governor's Conference which gained the support of a bipartisan bloc of 15 governors. His proposal was similar to mine and I asked him to meet with me in Washington. We agreed to work out a mutually agreeable proposal upon which an enlarged and bipartisan bloc of support could be built.

On October 29, 1971, we unveiled our new bill and the constituency supporting it. The bill incorporated the FAP structure. Moynihan says the liberals were not well organized. We weren't the first time around. But by the fall of 1971 we were. Our new coalition included 23 senators, 15 governors, the AFL-CIO, the League of Women Voters, Common Cause, the UAW, the National League of Cities/US Conference of Mayors, the National Association of Counties, the American Jewish Committee, as well as other varied and influential organizations.

With hope renewed we entered 1972. The Finance Committee resumed public hearings in February. The administration began looking for a Republican

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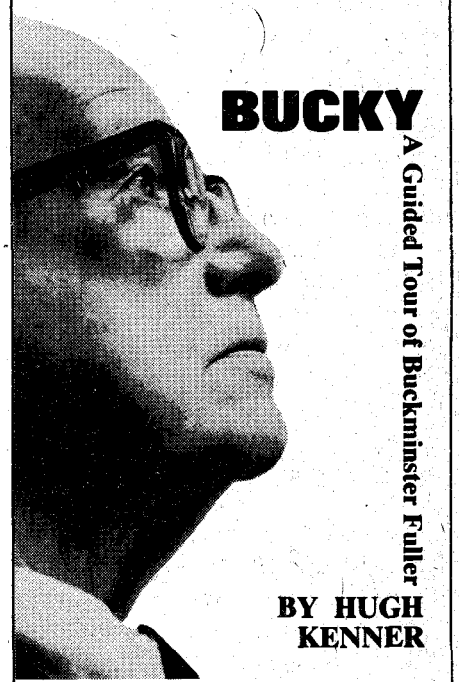

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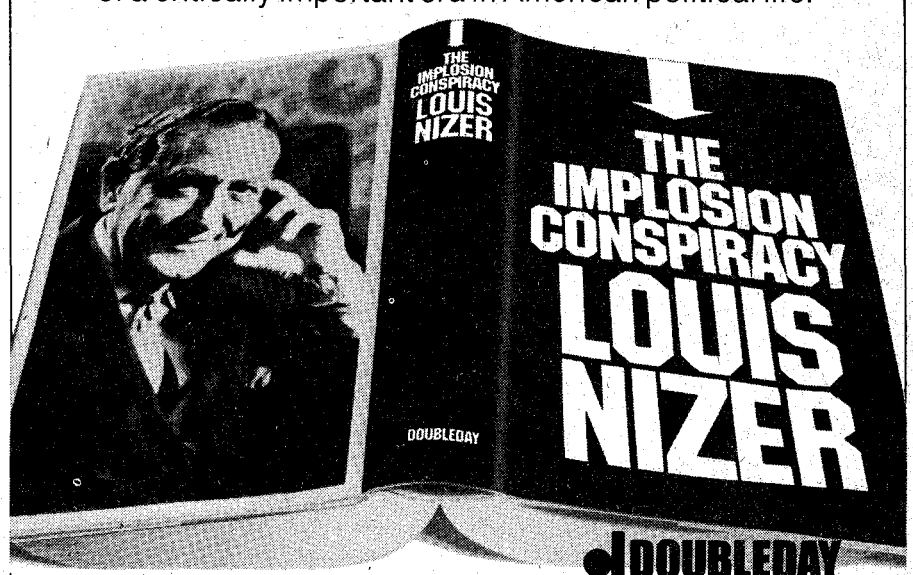

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senator to lead the floor fight for their bill, but could enlist no one. The administration also wasted a good deal of time trying to convince Finance Committee foes of HR 1's merit, meanwhile undercutting my efforts by supplying statistics to the Finance Committee indicating that my proposal was unworkable. (Actually it contained almost all of the President's original provisions.)

I expressed doubts about the President's commitment to welfare reform, and that caused a furor in the media. The President called me, sent Pat Moynihan from Cambridge to see me, and set up meetings in my office with Ehrlichman and Richardson. The purpose of all this was to assure me that the President really wanted welfare reform.

The administration's private head counts showed that only 16 senators supported their bill, while substantially more supported mine. Working together, therefore, we hoped to establish a majority for FAP. We began months of negotiations between HEW, the Labor Department and my staff which culminated in a bill which Secretaries Richardson, Hodgson, and I supported. Richardson sent a memo to the President urging support of our compromise and asked for a meeting. The President, about to depart for Moscow, put Richardson off, saying he would discuss the matter June 16. The delay was critical. For between Richardson's request and the June 16 meeting, the ill-fated McGovern welfare reform proposal received a lambasting in the California primary debates.

Senator McGovern's costly plan made President Nixon feel more secure in sticking to HR 1 without compromise even though he knew it had no chance to pass. For while the President and Senator McGovern were both talking about a guaranteed annual income, only McGovern was clearly identified on this issue by the public. By June of 1972, despite the urging of 19 Republicans in a letter to the President asking for a Ribicoff-administration compromise, presidential politics had won out over substantive reform. The President refused to budge. An added blow came at the end of June when the Social Security increase was passed separately from HR 1. This removed an incentive to get HR 1 out of committee.

When HR 1 finally emerged from the Finance Committee in late September, with a regressive version in place of FAP, death for reform was virtually certain. The administration refused to budge on any compromise—even one proposed by Senators Stevenson and Cooper with only procedural changes and a total cost figure exactly the same as the administration bill.

Had Moynihan stayed for the third and fourth quarters of the game—or even chronicled it—he would have seen that it was the failure of support from President Nixon that sealed the doom for welfare reform.

Abe Ribicoff

Doom at the Top

The Best and the Brightest

by David Halberstam

(Random House; $10)

Boosted by generally favorable reviews, David Halberstam's study of the men who led us into Vietnam seems as firmly ensconced at the top of the nonfiction top 10 as that saltatory seagull on the fiction best-seller list. Halberstam says that he "set out to study the men and their decisions. What was it about the men, their attitudes, the country, its institutions and above all the era which allowed this tragedy to take place?"

Mary McCarthy, writing in *The New York Review of Books*, has been particularly harsh about this approach: "Were Halberstam Shakespeare or Sophocles (an idea that sometimes seems not far from his mind), the real-life dimensions of his figures, the prosaic nature of the 'mighty' conflict would hardly be an issue. . . . Vietnam is too disagreeably close to us, one would guess, to serve as source material for tragic art, even in the hands of a gifted dramatic poet (there is something distasteful in the very notion of approaching it as an *American* tragedy, whose protagonist is a great suffering Texan)."

If it is not an "American tragedy," what is it? Even sympathetic critics of Mr. Halberstam have not been able to settle on what type of book this is. Bert Cochran in *The Nation* called it a "glowing example of journalistic history, a genre recently rechristened the New Journalism." "What we have here," wrote Hans J. Morgenthau in *The New Leader*, "is less a history of the decisions taken during the Kennedy and Johnson administrations than a psychological analysis of the policy-makers and their interaction." Peter S. Prescott in *Newsweek* called it "a study of the decision-making process that got us into the Vietnam war and kept us there, a study of the nature of political power that concentrates on the men who made the critical decisions, the assumptions they brought to their various jobs, and the society that produced those assumptions." Victor S. Navasky, writing in *The New York Times Book Review*, liked Halberstam's anecdotal approach to history because the author "is able to bring his case alive through the artful use of warehouses of insider anecdotes, vignettes and detail."

Halberstam admits that when he went to Saigon for the *Times* in September 1962 he arrived "believing at first in the value of the effort. . . . It was a small war then, the Americans were only advisors, and it seemed to be a test of two political systems in a political war. I thought our system the better, our values exportable, and thought perhaps with luck and skill our side might win, but events soon disabused me." He did not question the moral assumptions that underlay the use of American military power in Vietnam in 1962. Yet, when he writes of the Bay of Pigs debacle in 1961, he says, "There was far too little questioning of the moral right to launch the attack: after all, the Communists did things like this all the time, that was the way it was, the way power was used." Of the invasion of the Dominican Republic in 1965, he writes: "No one at a high level in the Administration dissented, or suggested that the United States had no legal justification for moving in with force. . . . American muscle had determined the outcome." The Bay of Pigs seems not to have

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sensitized him before he went to Saigon, and the Dominican Republic, which occurred well after "events" in Vietnam had "disabused" him of notions that power should be exercised in a moral vacuum, rates but one paragraph.

The book is not well organized. Chapters begin and end almost at random. The portraits of individuals seem to have been written first—indeed some were published as magazine articles two years ago—then chopped up, distributed over a number of chapters, and glued together by some historical narrative. He builds word descriptions that climax in a word or phrase which is supposed to give us ultimate insight. Beginning *pianissimo:* "When McNamara began to take charge of Vietnam," he went there "looking for what he wanted to see; and he never saw nor smelled nor felt what was really there, right in front of him. . . . What was created on those trips was not an insight about the country but an illusion of knowledge." *(Forte.)* "And so he created the base of knowledge, first-hand, on which he would make his judgments and recommendations. It was all based on those terrible trips out there, the unwillingness to accept civilian assistance in challenging the military reporting, the unwillingness to adapt his own standards and criteria." *(Fortissimo.)* "It is not a particularly happy chapter in his life; he did not serve himself nor the country well; he was, there is no kinder or gentler word for it, a fool."

Who will argue that McNamara was not deluded—or deluded himself—about American "progress" in Vietnam? But Halberstam's melodramatic, four-page crescendo does not enlighten us about a complex human being who, later chapters show, had serious doubts about Vietnam and precipitated his own firing when he publicly expressed them.

Melvin Maddocks *(Time)* has noted that "Halberstam's heroes seem more varied, more living. His few heroes are the men who said no." It is a good observation. The reason the author's heroes seem more alive than his villains is his predisposition to interpret actions as good or evil depending on whether one is a white hat or black hat. One sees this bias at work when Halberstam judges General Maxwell D. Taylor and George Ball in similar circumstances.

Taylor had opposed sending American combat troops to Vietnam, but when the decision went against him in 1965, he tried to limit their number and deployment. While he was ambassador to Saigon, the military was given the go-ahead to begin planning for three divisions. Taylor cabled Washington that "it was not his understanding that the logistical troops were an advance guard for the three divisions." Taylor was trying to make certain the military would not use the logistics troops as a foot in the door for the three divisions: a deployment decision which should be made separately. But, notes Halberstam, "no one was paying much attention to him; he was in fact already complaining to Washington about being cut out of important cable traffic. So, even here Taylor's ability to hold the line was only partial." Eight pages later, the author concludes that Taylor "had, by fighting to limit the troop escalation step by step, helped them slide into it. The gap from each step to the next step always seemed relatively small, each step that had been exacted while he held back had simply made the next step a little easier, never too great. He had been a conduit, not a brake." Now, if Taylor

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was being "cut out of important cable traffic" concerning the troop escalation, how could he still have served as a "brake"?

Halberstam here is trying to make a point about "salami tactics"—that a half step was not a restraint but just half the distance to the full step. Agreed, but contrast his treatment of Taylor to that of Ball in a similar instance in the same year (1965). At the time, Westmoreland had won a 200,000 troop commitment; Ball, we are told, then "made his last pitch. He knew now that he had in effect lost: he was now trying to fight a delaying action. Instead of our going to 200,000 as recommended, he wanted to hold the line at 100,000, with an understanding that this was the ceiling, and to use the troops for a three-month trial period." So, although both Taylor and Ball supported half-steps and got sliced up in Westmoreland's salami machine in 1965, Taylor "helped them to slide into it" whereas Ball was "trying to fight a delaying action."

Medieval men who did not understand astronomy thought eclipses of the sun or moon the work of the devil. Halberstam, who does not understand the military, blames it for our deepening involvement in Vietnam. All but one of the book's reviewers I have read seem to have bought Halberstam's theory. The exception is Mary McCarthy: "It is true that generals always ask for more, more men, more hardware, and that if you give them an inch they will take a yard. . . . In any case the rosiness of the generals' reports from the field was continually being contradicted by their demands for more, which ought to have been a warning to the Administration of what its policy implied." The White House *chose* to ignore the danger signal implicit in the military's demands for more and refused even to consider moving toward a negotiated end to the war in the early Johnson years.

There was another failure which may have contributed to our involvement in Vietnam: that of "defense intellectuals" in the academic community to investigate the limited war theory of the New Frontier as thoroughly as they had nuclear war theory. When I was in school at Ann Arbor in 1965, I recall using Michigan's graduate library to gather reference material for a paper on limited war. My first stop was the card index, but under the category "limited war" I found just three books. There were too many under "nuclear war" to bother to count. In the officer corps of the late Eisenhower and early Kennedy years, the works of nuclear theorists were required reading, and the military, which had no book-publishing intellectuals of its own on nuclear war, relied heavily upon these books to grapple with the doctrinal shift from the Dulles massive retaliation strategy to the New Frontier's flexible response. The analyses which might have shown how difficult it would be for us to make a limited commitment and then withdraw if that commitment proved insufficient were not written. By the time the academic community mobilized against the Vietnam war, it was powerless to affect the decision-makers with books.

My purpose in citing this failure of the academic community is not to assess guilt but to show that American involvement in the war was influenced by the presence or absence of many diverse factors. Without defense intellectuals to guide the development of limited war theory, the military was left to create its own. One result was an almost mystical faith in the power of escalation to defeat a "fourth-rate" power such as North Vietnam, and I can vividly recall a briefing given by a supremely confident air force major general in 1966 in which he explained how easy victory would be. All you had to do was go one level of intensity higher than your opponent could go and you won; superior technology would carry the day.

Some of the best writing on Vietnam has been done by newspaper reporters—Don Oberdorfer's *Tet!* comes first to mind—but Halberstam aspires to be more than a chronicler of events and in the process becomes less. His assertions about what went on in the minds of the principals may be superficially appealing, but he could not have *known* what they thought. He *infers* their thoughts based on government documents, anonymous anecdotes and his own predispositions toward each hero or villain—a nice stylistic device in the hands of a Gay Talese writing about the Mafia but a blunt instrument for describing how this country got into its worst war.

Halberstam says we were lied to—and we were—and that McNamara "dissembled" in his public pronouncements about the war—and he did. But what of Halberstam? He lists no sources for his more than 400 interviews. He says he had originally intended to list them but changed his mind "because of circumstances: the political climate is somewhat sensitive these days, and the relationship of reporter to source is very much under attack." I suspect the reason Halberstam did not reveal his sources is one common to all writers who interview present or former government officials: they will speak only on a "not for attribution" basis, the so-called backgrounder. I suspect Halberstam found similar strings attached to many of his interviews and had to agree in advance that he would not quote his interviewees by name. *If* my surmise is correct, when he refers to the sensitivity of the "political climate" he is dissembling.

I began this book with high expectations. I had recently read Halberstam's thin volume on Ho Chi Minh and anticipated, at the very least, a well-researched book. I had read the McNamara profile when it originally appeared in *Harper's* and thought it interesting at the time, but the unconscionable excesses of the completed work have compelled me to reappraise that profile and the author's methods. Halberstam is a success. I do not begrudge him that. But I would feel somewhat better if he were enriching himself on a novel about a girl with uncurable cancer or a bird that flies like a dive bomber, instead of a distorted history of America's darkest hour. Halberstam's avowed purpose was to learn *why* it happened, but instead of revealing the truth, he has given us scapegoats.

Peter J. Ognibene

"WHO CAN BOTHER *with grammatical niceties in a monarchy gone made with blood lust? Not the Rev. Dr. Ernest T. Campbell, who last week in the course of a stop-the-bombing sermon addressed Billy Graham: 'As one of the "near voices" within hearing distance of the throne, you surely bear a responsibility to critique government policy as well as bless it.' Let us all prayer for Dr. Campbell."*

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NOTES ON CONTRIBUTORS

Poet SANDRA MCPHERSON *is the author of* Elegies for the Hot Season *(Indiana University Press).* ABE RIBICOFF *is former governor of Connecticut, former secretary of HEW and now the senior senator from Connecticut.* H. R. WOLF *teaches English at the State University of NY at Buffalo.* JOHN W. NASON *has been the president of Swarthmore College and Carleton College and was the president of the Foreign Policy Association from 1953 to 1962.* SANFORD J. UNGAR *is now covering the Pentagon papers trial for* The Washington Post.

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Abandoned to Our Own Minds

The Abandoners: Portraits of Loss, Separation and Neglect

by Thomas J. Cottle

(Little, Brown; $6.95)

Themes of abandonment haunt Western literature from *Genesis* to *Waiting for Godot*. Thomas Cottle's *The Abandoners* is a collection of case histories of abandonment, including Cottle's own, as it is experienced, in the main, by American adolescents. Abandonment takes many forms for Cottle, perhaps too many. It applies to the experience of a black youth who is bussed from Roxbury to a predominately white high school and then—as if to protest against being a double outsider, a prisoner in the ghetto, on parole in the white school—gets into a vicious fight. It applies also to a white college student who is determined to get away from home, to make it in white America and who nonetheless has only contempt for the more privileged students he struggles to emulate. Abandonment can mean, then, both being torn away from home and not wanting to go home again. We are asked to consider abandonment as a fantasy experience—the reverie of a Cambridge girl who imagines destroying her parents—and as an intractable social fact—the thoughts of a parent whose son has been arrested for Weatherman activities. If abandonment is all of this, what isn't it?

This is a compassionate book but one that falls confusedly between fiction and biography (and autobiography). Essentially Cottle's problem is one of point of view: how can he as interviewer claim objective knowledge about his subject(s) without translating their experience into false categories? What kind of sociological or psychoanalytic language—the way Cottle tends to speak—could apply authentically across the board to "losses" as diverse as those mentioned above? Given Cottle's devotion to the specifics of personality, no one method of approach can be satisfactory. And as a further complication, all his claims about his subjects are always shadowed by his own interiority—as he is well aware. He says in *Time's Children* (his first book):

> But, mainly, the source of our impressions, the grist, as it's still called, is our own interiors, interiors that do more than pay homage to materials that once lived outside of us or before us.

Cottle wrestles with this ongoing dilemma of modern consciousness—how to see the world without seeing oneself seeing—by adopting a series of narrative postures in an attempt both to dramatize and purge his participation. He extends multiple selves toward his subjects to catch their truths through the fullness of his manifold subjectivity: *as* poetic journalist; imagined filmmaker; autobiographer; novelist of birthing adolescence; Whitmanesque cataloguer of youthful disconnections; and, finally, as sociologist-therapist.

While sometimes effective, these shifting points of view lead us away from an intensity of response that a steady form and logic of presentation would purchase. Cottle's self-awareness is not sufficiently agile and embedded to achieve the synthesis he imagines. *Let Us Now Praise Famous Men* comes to mind as a successful model.

Beyond the problem of shifting form lies the misleading encounter between Cottle's history and the history of his subjects. He consistently places himself in the center of the field he is trying to observe. The optics of his own adolescence become a general theory of light, or darkness. Perhaps this is why the chapter dealing with his own youth, "The Connections of Adolescence," is far and away the most moving part of the book. Here Cottle can transmit with depth and clarity his experience of bodily self-discovery and the pull between home and peers, and can let out all his sails because he doesn't have to mediate his own subjectivity. When he describes *his* family table, the one *he* must abandon, we suddenly know what

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abandonment is about for him.

> But only rarely were we four separated or forced to alter our seating plan about the table. When this happened, there was always discussion of the rearrangement, a verbal recognition of the sacred constancy of our seating . . .

Here is the persistent basis of middle-class American nostalgia and utopianism, a dream of constancy and change that is familiar to us through, among many others, Wordsworth and Freud. When we see this theme as the locus, we can look at the passages describing a rural Illinois community, for instance, and hear a pastoral tonality; discern how Cottle's search for lost history and home shapes the history of his subjects.

> There is no questioning, no doubting during these sessions, for the land is life; the fields are, in their way, sacred, and weather, the demon or goddess that manipulates life and the daily routines of everyone in the community.

We are closer here to the ritualistic movements of Hemingway's *Death in the Afternoon* than we are to the familiar images of our midwest culture.

In this way, *The Abandoners* becomes an autobiographical novel in which Cottle is trying to retake the photographs of his childhood by trying to reenter the time of his subjects. In a very real sense, as Cottle knows, the time of his subjects is not his time; it is "the time of them." But in trying to enter that time he also claims the time of a young black who feels slighted—without reason, Cottle thinks:

> Not *everything* is race. Not everything is the old treating the young rudely or insensitively. Not *every* circumstance has to recapitulate the past. Why must everything with you always be a reenactment of violence or death, or revenge, or people imprisoning or oppressing you?

Now why does the young man have any less need than Cottle himself to recapitulate his past, his time of hatred and humiliation? It is his time, not Cottle's. Of course, Tom Cottle knows this, but the knowledge opposes his will to become one with his subjects, or to find his lost youth through them. It is as if, having fallen from his own middle-class Garden, he is looking for a greener world among the poor, young and abused. Like other sociological and educational writers of our time, he is drawn to that which he would correct.

The result is a compassionate but unsuccessful book, questing unknowingly for truths of the self through the biographies of others. It becomes sociology as metafiction.

H. R. Wolf

From Isolationist to Isolated

Fifty Years of Foreign Affairs

edited by Hamilton Fish Armstrong

(Praeger; $12.50)

In 1922 the United States, having emerged from World War I as the dominant world power in the 20th century, was isolationist. The Treaty of Versailles was spurned in favor of a separate peace with Germany. The Senate rejected the Covenant of the League of Nations, thereby minimizing American influence in the organized efforts to maintain peace during the two decades between World Wars I and II. Even membership in the World Court was shortly to be rejected. Immigration quotas were established for the first time, and the Fordney-McCumber Tariff reflected a strongly protectionist attitude.

There were, however, statesmen who recognized that the United States would be forced to play a role in international affairs and who were concerned that it be an informed and responsible one. One such group founded the Foreign Policy Association on the eve of the Armistice in 1918. Another established the now defunct League of Nations Association. Late in 1921 still a third group formed the Council on Foreign Relations. Privately funded, strictly nonpartisan and scrupulously independent of government, the council has through half a century been devoted "to the promotion of a better and wider understanding of international affairs through the free interchange of ideas." Its membership is composed of a majority of the best international brains in the country—men (and at long last women) who have gained international experience through government or international organizations, businessmen and bankers with international connections, academic scholars in foreign affairs, journalists and others. Its influence on the course of American foreign policy has been enormous.

The most important and far-reaching decision of those who created the council was to launch in 1922 the quarterly journal entitled *Foreign Affairs* which celebrated in October 1972 its 50th anniversary. *Foreign Affairs* has probably been the most important forum for the discussion of international issues to be found anywhere in the world. Its contributors have included statesmen and scholars from every continent and of every persuasion. Its articles (over 2600) have reflected the course of international affairs, and some have changed that course. The journal stands as a monument both to the wisdom and courage of the council members who have given the editors complete freedom and to the two editors who were directly responsible for its outstanding success over 50 years.

The first was Archibald Cary Coolidge, Slavic scholar at Harvard University, who served from the start until his death in 1928. The second was Hamilton Fish Armstrong, who was managing editor for those first six years and editor for the next 44. A graduate of Princeton who saw service in Europe in World War I and worked thereafter for the *New York Evening Post*, "Ham" Armstrong became the presiding genius of *Foreign Affairs* and a powerful influence within the council. During World War II he served in various governmental capacities both in Washington and abroad. The volume here under review, *Fifty Years of Foreign Affairs*, is his selection

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of 31 articles from the first 50 years.

The title is both exact and misleading. It arouses the expectation of a review of 50 years of international affairs or of American foreign policy, whereas it does nothing of the sort. It is an arbitrary selection, but a rich one. One might complain of many significant omissions, but the panorama of 50 turbulent, dangerous years is unquestionably there. Take a look at Coolidge's 1922 assessment of the Bolshevik Revolution, so salient that Lenin found it important to have a copy. Here is the famous article on "The Sources of Soviet Conduct" by "X" (George F. Kennan) outlining the doctrine of containment made famous by Secretary Dulles. Arthur Schlesinger, Jr.'s thoughtful and comprehensive review of the "Origins of the Cold War" (1967) takes issue with the revisionists and offers compelling evidence for the inevitability of the confrontation between the Soviet and the Free World policies. And now that the Vietnam fighting has ended, it is well to reread Clark Clifford's immensely human and readable confession of his conversion from a hawk to a dove.

In April 1960 *Foreign Affairs* published an article by Dean Rusk entitled "The President." Armstrong says of it: "This is an analysis of the magnitude, the transformations, the risks, and the ultimate loneliness of the office of the President. While illusions of omnipotence must be avoided, the influence of the President of the United States can sometimes come close to being absolute, especially in times of crisis. The exercise of this power and responsibility is clearly an awesome burden." Rusk argues against summitry, and what he says on this and other aspects of the President's role is relevant today.

Equally so are the comments of Henry Kissinger in an article published in 1956 headed "Reflections on American Diplomacy." In the light of his present role it is important to know what Kissinger really thinks about negotiations among sovereign states. The United States, he suggests, has by tradition been pragmatic rather than intellectual in its approach to foreign policy. Our experience and skill lie in administration rather than in policy. We tend to deal with emergencies, not with variations in a long-term program. "In short," he writes, "we are trying to cope with political problems by administrative means. The temptation to formulate policy administratively is ever present in a government organized, as ours is, primarily for the conduct of domestic affairs. But the spirit of policy and that of bureaucracy are fundamentally opposed. Profound policy thrives on creativeness; good administration thrives on routine—a procedure which can assimilate mediocrity. Policy involves an adjustment of risks; administration an avoidance of deviation." This distinction becomes all the more important when the conditions on which negotiations are based are changed. He quotes Mao: "In the world from now on neutrality is only a word for deceiving people." And he goes on to say: "In short, diplomacy has a different function in a revolutionary international order. In a legitimate order, diplomacy seeks to compromise disagreements in order to perpetuate the international system. . . . In a revolutionary order, on the other hand, adjustments have primarily a tactical significance: to prepare positions for the next test of strength." One wonders whether these views have been strengthened or changed by the negotiations of the past few months with Le Duc Tho and with Thieu.

Armstrong refers in his preface to brief profiles of individuals, and he did well to include them. Herbert Feis on John Maynard Keynes offers a thoughtful analysis of the development of Keynes' ideas from *The Economic Consequences of the Peace* to *The General Theory of Employment, Interest and Money*, an intellectual pilgrimage of profound importance to the Western world. The Swiss professor, Herbert Luethy, gives us a penetrating appraisal of de Gaulle—"Le Grand Charles." Least important but by all odds the best is Harold Nicolson's *vignette* of Lord Curzon whom Armstrong describes as "one of the most formidable and cantankerous of modern statesmen." This is brilliant portraiture—a delight to read and a pleasure to

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remember.

The first essay in this volume is an article by Elihu Root which appeared in the first issue of *Foreign Affairs*. Concerned by the ignorance and isolationism of the postwar period, Root articulated in simple language that has never been improved upon the *rationale* for democratic control of foreign policy. "When foreign affairs were ruled by autocracies or oligarchies the danger of war was in sinister purpose. When foreign affairs are ruled by democracies the danger of war will be in mistaken beliefs." If decisions affecting life and death are to be made by popular vote, then it is essential that the people be fully informed. Events of the past 50 years have proved, alas, that knowledge alone is not enough. No people have been bombarded with more information about foreign affairs than the citizens of the United States. Yet 50 years after Elihu Root wrote and after 50 years of *Foreign Affairs*, its editor can write in the final article in the book that America stands isolated, with its prestige at low ebb. "Not, in the experience of the present writer, since the Harding era when we denied our enlightened self-interest and retreated from responsibility in our foreign relationships . . . has the world had such a poor opinion of us."

Has it all been futile? Are we doomed like previous civilizations to inevitable annihilation? As Lord Ritchie-Calder points out in his article on what man is doing to his environment, past civilizations in dying gave way to new ones. Today we face the danger of destroying the possibility of any civilization whatsoever surviving on the planet. We have no choice but to go ahead with all the intelligence and energy and good will we can muster to fashion institutions which will help to preserve peace and to guide our conduct in ways that will enhance the chance of survival. Armstrong says it eloquently, and we shall give him the last word. "The direction is forward, to recognize and accept the present ills of our society and to set about curing them—by rehumanizing ourselves, by readopting civility as a part of good behavior, by recognizing that history can inform the future, by encouraging the growth of elites in many fields, not in order to copy them snobbishly but to set intellectual standards to which everyone may in some degree aspire, by asserting that aesthetics is an essential element in art, by reestablishing learning as opening doors to choice, by leavening the mediocrity of our culture with snatches of unorthodoxy, by welcoming diversity of opinion as an essential element of strength in a democracy."

John W. Nason

Coming

William Saroyan
reviews
C. L. Sulzberger's
The Tooth Merchant

Judicial Politics

The FBI and the Berrigans: The Making of a Conspiracy

by Jack Nelson and Ronald J. Ostrow

(Coward, McCann & Geoghegan; $7.95)

In the fall of 1970 J. Edgar Hoover set out on what would be his last crusade. Backed by a Justice Department that was all too willing to take his every word as gospel, he declared that he needed 1000 new FBI agents and more money—not to combat organized crime, not to deal with narcotics traffic, not to investigate skulduggery by financial manipulators, but to fight radicals.

Hoover loved making headlines on his own terms, and this time around he was extraordinarily successful, warning United States senators not to gather in large groups or travel together, and in a "hearing" where awed legislators nodded in assent, declaring that the brothers Berrigan, Fathers Daniel and Philip, were spearheading a plot to blow up the tunnels under government office buildings in Washington and to kidnap Henry Kissinger.

Such an accusation, based on sketchy investigative reports and unleashed before any charges were officially filed, was, of course, entirely improper. But those were the days. Hoover had spoken, and the Justice Department's high-riding Internal Security Division whipped up a grand jury investigation in Harrisburg, Pennsylvania. The country, not yet finished with the debacle unfolding before Judge Julius H. Hoffman in Chicago, had a new "conspiracy trial" to look forward to.

This book, by *Los Angeles Times* reporters Jack Nelson and Ronald J. Ostrow, is a chronology of the case. It does not answer the question—and perhaps no one will for a long time—of whether Philip Berrigan (Daniel was not in the case, ultimately) and other members of the militant Catholic left really intended to move on from draft board raids to bolder and more spectacular acts. But it does provide a marvelous picture of the two opposing forces, each living in its peculiar netherworld, in one of the most wasteful domestic confrontations of the Vietnam war era.

There is the FBI, spending its resources in a most preposterous, even laughable, way. (At one rally in a New York church while the Berrigans were being sought as fugitives in connection with their conviction for a Maryland draft board raid, one-fifth of the 500 people in the audience were FBI agents.) Raiding convents, looking under beds and setting up an informer-convict in a luxurious life-style near the federal penitentiary in Lewisburg.

On the other side are the movement folks, as naive and shortsighted as the most basic mystery-novel characters, looking more like the gang that couldn't shoot straight than a group of conscience-stirring idealists. Sister Elizabeth McAlister, writing of the "kidnap" plan, tells Philip Berrigan "this is in utter confidence & should not be committed to paper." The paper to which it was committed, natch, passes through the hands of informer Boyd F. Douglas, Jr., one of America's great con men, who has already taken in Berrigan without any trouble.

Except for Eqbal Ahmad, the Pakistani intellectual who masterminded the Berrigans' underground life, the defendants seem, in Nelson's and Ostrow's account, to need and want their trial as a

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catharsis.

Eventually they won, but for the conviction of Philip Berrigan and Elizabeth McAlister for letter-smuggling. (They were the first ever to be prosecuted for such activities, no longer illegal in the federal prison system, and the prospects for reversal on appeal are excellent. The jury could not reach a verdict on the conspiracy. Berrigan has been paroled and McAlister is unlikely ever to go to jail.) Their victory, however, is clearly not based on their effectiveness or their strategy, but rather on the fact that their attorneys destroyed Douglas on cross-examination and then fought bitterly to keep the defendants from ruining themselves on the witness stand. McAlister rationalizes the decision not to present any defense case, in a note quoted by Ostrow and Nelson, by saying that "The response of silence seems the best response to the illegitimacy of this indictment, of the process of this government."

This book is not popular with the Berrigans' supporters. The authors never interviewed the priests and have little reverence for their dialectic, which they say "turns off" the public and contributed little to the effectiveness of the antiwar movement.

It is an annoying account for other, largely stylistic, reasons. Nelson and Ostrow do not introduce a woman without an appositive phrase telling the color of her hair and the length of her skirt. They are preoccupied with the gossip in the courthouse corridors and persist in providing such irrelevant detail as the exact time of lunch hour at key moments in the Harrisburg trial.

But their review of the case is an important contribution. They demonstrate the extreme weakness of the government's case, even after William S. Lynch, one of the Justice Department's crack professional prosecutors, had taken it over from the zealots of the Internal Security Division. And they provide still more evidence of how Hoover, long past his usefulness as a public servant and his competence as a law enforcement official, succeeded in twisting the law and government procedural safeguards to suit his own vicious prejudices.

There is also the material here to draw a logical conclusion: that the government did not care so much whether it won its case in Harrisburg, or for that matter earlier in Chicago. A far more important goal was accomplished. The militant antiwar movement was successfully discredited, and other, milder activists were discouraged from exercising their right to protest—out of the fear that they would be tarred with the Berrigan brush or investigated by a grand jury. When the legal history of this period is written, it seems almost certain that the Chicago and Harrisburg cases will not be noted for their contributions to conspiracy law or any other such lofty matter, but rather for the way in which the judicial system was used for political purposes.

Sanford J. Ungar

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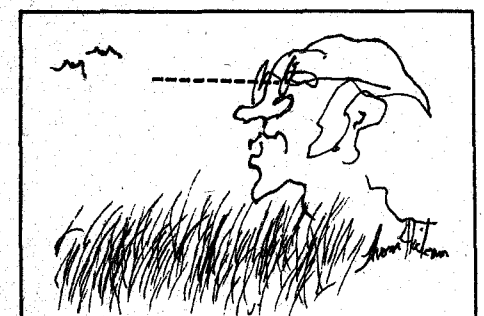

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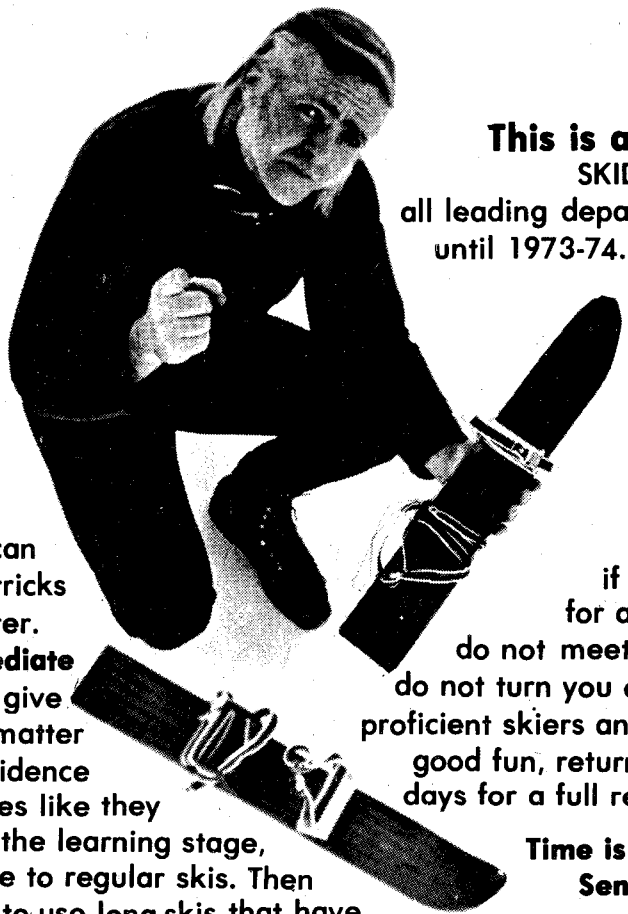

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